United Nations CAT/C/ITA/5-6

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
11 April 2016

Original: English
English, French and Spanish only

Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Fifth and Sixth periodic reports of States parties due in 2016

Italy*, **

[Date received: 21 October 2015]

* The fourth periodic report of Italy is contained in document CAT/C/67/Add.3; it was considered by the Committee at its 761st and 764th meeting, held on 4 and 7 May 2007 (CAT/C/SR.761 and 764). For its consideration, see the Committee's concluding observations (CAT/C/ITA/CO/4).

** The present document is being issued without formal editing.

GE.16-05880 (E)

Please recycle

INTRODUCTION

1. Submitted in May 2004 (CAT/C/67/Add.3), the consolidated (IV-V) periodic report was considered by the UN CAT Committee, in May 4-7, 2007 (38th session). The Committee published Concluding Observations (CAT/C/ITA/CO/4), on July 16, 2007. The present periodic report, submitted in accordance with Art.19 of the Convention and LOIPR proceeding, updates previous reports and provides the pertinent responses to the last Committee's Observations.

2. Following the request reported under Para.29 of the above Concluding Observations (CAT/C/ITA/CO/4), Italy provided follow-up information (CAT/C/ITA/CO/4/Add.1), in May 2007.

3. In order to draft the present periodic Report, a Working Group was set up in 2014 - following the re-establishment of the Inter-ministerial Committee for Human Rights (hereinafter, CIDU) within the Italian Ministry of Foreign Affairs and International Cooperation, in late 2013.

4. The above WG prepared the present Report in line with LOIPR questions (CAT/C/ITA/Q/6/CRP.1) and the follow-up letter by CAT Rapporteur. However, the elaboration of the Common Core Document is still underway.

5. As for the political situation, the XVII Legislature has been initiated on March 15, 2013, following general elections held in late February 2013. Since April 28, 2013, the Government has been led by a centre-left wing parties-coalition, currently headed by Mr. Matteo Renzi.

6. The Italian Government has been paying specific attention to *inter alia*: the reduction of prison overcrowding; improvement of judicial safeguards; increasing attention to the rights of detainees and prisoners; the closing down of judicial psychiatric hospitals (acronym in Italian, OPG); and the establishment of the NPM - following the ratification of the OPCAT by Act 195/2012.

Articles 1 and 4

7. From a legislative standpoint, mention has to be made of various draft pieces of legislation pending before the Parliament, on the introduction of the crime of torture in the ordinary Criminal Code (hereinafter, CC): A.C. 2769; A.C.2168; A.C. 1801; A.C. 1499; A.S. 874; A. S. 849; A.C. 979/; A.S.601; A.S. 395; A.S. 388; A.S. 362; A.C. 588; A.S. 10; A.C.276; A.C.189; Bill 2798/C.

8. Additional measures to prevent forms of cruel, inhuman or degrading treatment of persons in detention have been introduced by: Law-Decree 78/2013, converted into Act 94/2013; Law Decree 146/2013, converted into Act 10/2014; and Law-Decree 92/2014, converted into Act 117/2014.

9. While recalling our previous periodic report, the crime of torture has not been formally included in the ordinary CC yet, due to opposite stances: between those who stress the comprehensiveness of the existing legislation and those who deem that the formal introduction of the crime of torture is a necessity in light of relevant case-law (i.e. ECtHR on Cestaro v. Italy, judgment 6884/11, dated April 7, 2015).

10. Thus, the parliamentary debate focuses on the draft law introducing Art.613-bis in the CC, as already approved by the Senate (*A.C.2168-A e abb.*) - and currently before the Chamber of Deputies. It envisages: torture as a common crime, coupled with aggravating circumstances if committed by public officials; detention penalty up to 10 years (12, if the

crime is committed by public officials); the 1/3 increase in the penalty in case of serious personal injuries, and 1/2 increase in case of very serious injury; a 30-year detention for unintentionally procured death, and life imprisonment for intentionally caused death. The Text also mentions inhuman or degrading treatment, which ECHR equates to torture and the ICC Statute envisages as crimes against humanity. The purpose is specific though broad in scope, such as obtaining information and asserting pressures or fear. The offence, in the wording proposed, may be committed by a public officer or a person in charge of a public service, and by a third person. Once approved, it will also introduce incitement to torture – though to be applicable to public officials, only. The statute of limitations is doubled in case of torture; declaration extorted by torture cannot be used in judicial proceedings. Rather, such declaration will be used to prove the occurrence of the events damaging the victim. The above Bill also envisages a Fund for the victims, in analogy with similar funds (i.e. for victims of THB).

11. The above Act 117/2014 (converting Law-Decree 92/2014) envisages specific compensation for prisons' inmates, if inhuman and degrading living conditions in jail are ascertained.

12. As for the specific S.A. 1216, this was set aside following the early conclusion of the XV Legislature. However, it has been re-considered when the parliamentary debate on the introduction of the crime of torture was resumed under the ensuing Legislatures.

13. Following the G-8 Events (2001), it has been launched a specific new training pathway for law enforcement officials, increasingly focused on IHRL, relevant methodologies and tools. Plus, by a 2008 Decree of the Head of the State Police, it has been established the "Training Centre for the Protection of Public Order"; in 2010, he also decided to establish the Observatory Against Acts of Discrimination (hereinafter, OSCAD).

Article 2

14. Various draft pieces of legislation refer to the establishment of an independent NHRI: 1. A. C.1004; 2. A. S.865; 3. A. C.1256. To this end, meetings have been held at both the Government and Parliament levels. Additionally, mention has to be made of: the National Observatory on the Rights of Persons with Disabilities; the National Ombudsman on Children's Rights; and the recent National Ombudsman on the Rights of Detainees.

15. From a legislative standpoint (reverse chronological order), mention has to be made of: Act 47/2015 (to further reduce the resort to detention precautionary measures); Act 28/2015 (in case of light conducts); draft laws 2798/C, 631-B/C (to increase the use of non-custodial measures before the imposition of a sentence); (to improve the efficiency of the judiciary) in the penal sector, Act 67/2014 (envisaging *inter alia* probation and the clustering of crimes, the penalty of which can be transformed into an administrative sanction); Law-Decree 146/2013 on extension of the electronic tagging to those under house arrest; Legislative Decree 101/2014, transposing EU Directive 2012/13, on the right to be informed in the criminal proceedings, which amends the Criminal Procedural Code by envisaging – as per general rule - the submission, in writing, of a list of rights to which s/he is entitled, and draft Law 2798/C; in the civil sector, Law Decree 90/2014, converted into Act 114/2014; Law Decree 132/2014, converted into Act 162/2014; and Law Decree 69/2013, converted into Act 98/2013.

16. Art.111 of the Constitution sets forth State's duty to ensure and to implement the principle of the right to a fair trial within reasonable time. Accordingly, Act 89/2001 has introduced a legal remedy in case of failure to comply with the above principle. In positive terms, the reasonable time occurs when the proceeding does not exceed before: the Court of first instance, a 3-year term; the Court of second instance, a 2-year term; and the Court of last instance (namely the Court of Cassation), a 1-year term.

17. At the opening of the XVII Legislature, a draft Law on the appeal to the Court of Cassation was submitted to the Chamber of Deputies, to ensure reasonable duration of criminal proceedings. With the aim of elaborating further relevant proposals, the Ministry of Justice has established various WGs. In this regard, Bill 2798/C aims at reducing the duration of proceedings besides streamlining the criminal system.

18. Concerning preventive custody in prison, this is a last resort (Art.275, para.3, Code of Criminal Procedure – hereinafter, CCP), under the strict circumstances set by Art.273 and ff.. In order to revoke this measure, CCP envisages an expeditious sub-proceeding. Preventive custody in prison can be imposed only as a last resort when there is a clear and convincing evidence of a serious offence. In this case, a maximum of two years of preliminary investigation is permitted with the exception of extraordinary situations. Plus, preventive custody is not permitted for pregnant women, single parents of children under the age of 3, persons over the age of 70, or those who are seriously ill. Art.657 envisages that pre-trial detention must be included when calculating the duration of the penalty; and Art.314 provides for compensation.

19. Law-Decree 146/2013, converted into Act 10/2014, provides for, inter alia: "Special Early Release"; and a new judicial complaint under Art.35-b of the Penitentiary Act (Act 354/1975).

20. Furthermore, regulatory changes designed to limit the use of remand in custody are as follows (chronological order): Act 199/2010 to enforce sentences in premises outside the prison facility; as for the access to home detention, following the extension to eighteen months for the minimum detention penalty by Law Decree 211/2011, inmates admitted to home detention have increased significantly. Plus, the arrested person for acts of lesser social alarm can wait for the validation of the arrest in home detention; Act 9/2012, adopted with the aim of reducing prison overcrowding; Law-Decree 78/2013, converted into Act 94/2013, with regard to the limit-requirement for the applicability of the precautionary measure of custody in prison, raised from 4 to 5 years.

21. More recently, Act 47/2015 has introduced several amendments to CCP and to the Penitentiary Act, as follows: in case of risk of absconding or risk of crime recurrence, the precautionary measures can be applied only when the risk is "current and concrete", meaning that it cannot be presumed from the gravity or the type of the crime; pre-trial detention can be ordered only when other measures are not adequate; when the judge orders pre-trial detention, the motivation behind the inadequacy of the house arrest and electronic tagging have to be provided; when the accused under house arrest infringes the exit ban, the judge must order the withdrawal of the house arrest unless the person is accused of a low gravity crime; strict rules have been adopted regarding both the pre-trial detention motivations and the time-limit for taking a decision by the Oversight Tribunal (if such requirements are not met, pre-trial detention will go ineffective); the right of the inmates to receive visitors has been extended to allow them visiting their children with a serious disability, in addition to those ones who are in life danger or are affected by a severe disease. Legislative Decree 28/2015 (implementing Act 67/2014) introduces Article 131-b in the CC: the defendant cannot be punished if the maximum penalty foreseen for the crime does not exceed a five-year-detention term, and the judge considers the conduct as facts of a low social alarm (e.g. the fact is particularly tenuous and the defendant's behaviour is not habitual).

22. As mentioned under the previous reporting exercise, the entire apprehension/arrest-related proceeding enforces Art.13 of the Italian Constitution. Legislation entitles detainees to prompt and regular access to lawyers of their choice and to family members. The State provides a lawyer to indigent persons, besides an interpreter for foreigners. Under exceptional and strict circumstances relating to mainly mafia-type crimes, the judicial authority may take up to five days to interrogate the accused.

In general terms, persons deprived of their liberty shall be fully informed of their rights in their own languages or in a language they understand (Legislative Decree 101/2014; Art. 94 of Legislative Decree 271/1989). Police must record all cases in which a person is deprived of liberty; and the Registers are updated, accordingly. The two ministerial Memos, dated 4 January 2007 and 19 July 2007, set the requirements for the proper use of: "Register of the rights of the person arrested or apprehended", and "Register of the persons restricted in security rooms". CCP states unequivocally the procedures and deadlines, which the Police must comply with.

23. Article 41-b of Penitentiary Act provides restrictions for those prisoners who have a top-ranking level in mafia, terrorist or subversive criminal organizations and who are imprisoned for one of the crimes indicated in the first sentence of Article 41-b, para.1. By Act 279/2002, this regime has been regulated as a continuous and steady provision; and the relating stabilization impacted on prisoners' rate (currently 716 persons).

24. Act 94/2009 strengthened such a regime - though to be applied when meeting complicated prevention, which considers: the collective dimension of the organized crime; the situation of a member of a criminal organization from the point of view of his/her capacity of communicating with the outside, of indicating strategies, and of planning crimes, and not from his/her capacity of directly perpetrating a crime.

Moreover, the main rule of the mafia group membership – as it was demonstrated by the main mafia trials – is given by the absolute loyalty to the criminal organization: its member, even imprisoned, continues to be linked to his/her organization, from which s/he gets monthly resources, necessary to maintain his/her family and to pay his/her lawyers' fees, etc..

25. This regime is neither a modality of execution of a sentence nor it is linked to the prisoner's attitude during his/her detention. The only two indicators for the enforcement of such differentiated regime are: the existence of an active mafia organization; and the role of responsibility played in it by the offender until the moment of his/her arrest.

26. Procedurally, the Minister of Justice adopts the provision applying that regime of a four-year term, which can be extended for an additional period of two more years, each. Complaints can be lodged, within twenty days from the date of the communication of the provision, with the Supervisory Court of Rome.

Prisoners can spend only two hours a day outside their cells: one hour of outdoor exercise; one hour in the rooms for activities in common with other inmates (no more than four persons). It is forbidden to communicate with the members of other similar groups. Those prisoners can receive one visit (instead of four or six) from their family members of one hour per month; such visits take place in well-equipped special premises and are video-recorded (Article 41-b, par.2-d provides for the listening and recording of the visits, upon authorization of the judicial authority); as an alternative, where the visit does not take place, prisoners can be authorised to make a telephone call. Only under exceptional cases, prisoners can be authorized to receive visits from persons different from family members; and their mail is submitted to check.

27. Within the above restrictions, prisoners can work, attend educational courses and participate in recreational activities. Constitutional Court Decision 143/2013 sanctioned the constitutional illegitimacy of Article 41-b, paragraph 2- d, letter b, last sentence, as amended by Act 94/2009, where it provided for limitations to the interviews with defence counsels. Therefore, paragraph 2-d, letter b, of Article 41-b restricts only visits paid by prisoners' family members and cohabitants, and it does not restrict interviews with their defence counsels.

28. Following the above Decision, the Head of the Penitentiary Administration Department prepared amendment to those relevant Minister's Decrees. The Head of the Department has also proposed that the Minister orders by a decree, the modification of the provisions, which have already been issued and are still enforced. In compliance with the norm currently in force, the prisoners' right shall be clearly acknowledged in order to allow prisoners to have interviews with their defence counsels - even prisoners - without any authorisation or limitation of the number and duration of interviews, without the possibility to check the actual need or the reasons for the interviews and subject to the definition of the practical modalities of carrying out such interviews, including the setting of hours, the choice of the premises, the identification of the defence counsel, etc..

Article 3

29. The push-back practice is not part of the Italian policy. As acknowledged under UPR-II, Italy is fully involved in the SAR activities. Plus, Act 129/2011, transposing EU Directive 2008/115/EU, introduces a gradual expulsion proceeding, based on the systematic case-by-case analysis.

Repatriation is immediate when there is the risk of absconding or if the migrant concerned is very dangerous or s/he has submitted an unfounded or fraudulent application. Last, voluntary repatriation is supported and assisted.

30. As for the situation in Lampedusa, those migrants willing to apply for international protection, enjoy immediate access to this proceeding, with the support by mediators and the other safeguards envisaged by law. At the Police HQs. in Agrigento (responsible for Lampedusa), 1327 applications for international protection were submitted in 2014; in the course of the first three months of 2015, applications have been 270. Across the country, relevant applications in 2014 were 63.041.

31. Since long time, it has been suspended whatsoever forms of cooperation with Libya. Italy has never signed a re-admission agreement with Libyan Authorities. More specifically, the last flight to Libya, organized by the Italian Government to return foreign citizens (all Egyptians) illegally reaching Lampedusa Island, took place, on April 4, 2006.

As for other countries, 34 Agreements (annexed herewith) have been signed so far; they always refer to IHRL besides envisaging yearly quotas of job-related permits. Moreover, several agreements have been concluded bilaterally with regard to cooperation-inspired security mechanisms, in order to prevent and manage trafficking and criminal exploitation of migrants.

32. As recalled in the follow-up report to UNWGAD, dated February 2014, on the purpose of assessing the application for international protection, the Court dealing with the substance of the case would infringe the law, should it base its decision exclusively on the credibility of the statements made by the parties concerned. According to the case-law of the Court of Cassation, a court dealing with the substance of a case concerning international protection is required to carry out a broad and rigorous investigation, based on a critical examination of the evidence produced by the party and on the exercise of its official duties/powers (Court of Cassation, Joint Session, Decision 17318/2008), since it concerns ascertaining whether the applicant is entitled to the protection of subjective legal conditions falling in the category of human rights (Court of Cassation, Joint Session, Decision 19393/2009).

33. The Court of Cassation, in its Decision 20637/12, confirms the principle that a Court cannot reject an application only on the basis of what it deems is the "applicant's credibility", but is also entitled to verify whether the subject's declarations are plausible, and therefore to check in particular - on the basis of the obligation to cooperate in the investigations - the actual situation occurring in the applicant's country of origin. Any

consideration in the judgment based on the lack of objective evidence in support of the applicant's declarations shall not be deemed sufficient - unlike those based on the criteria laid down in Art.3 of Legislative Decree 251/2007: that is to say, after having verified that all reasonable effort has been made in order to support the application with details; that there is an acceptable reason for the lack of objective evidence; that the declarations made are not inconsistent with the country's situation; that the application has been timely submitted; that the application is intimately plausible.

34. In a particular case, the Court of Cassation, Civil Section 6, observed that "for the purpose of recognition of the status of political refugee, the non-acceptance of the application to admit as evidence an arrest warrant and the non-activation of a formal request to the competent authorities in the country of origin amounts to a blatant violation" of Legislative Decrees 251/2007 and 25/2008. In particular, the Court of Cassation deems that it is the Italian judge who has to act in order to ascertain the conditions of the members of political parties in their country of origin, with respect to their freedom of expression of political dissent. It has been thus a wrong application of the principle of the burden of proof that has led to reject the request for protection on the basis of the fact that the applicant did not prove the existence of conditions preventing the exercise of fundamental rights. Therefore, the assessment needs to be carried out through the acquisition of information on the socio-political situation of the Country of return, which needs to be made in relation with the alleged persecution or danger on the basis of the sources of information indicated in Art.8 of Legislative Decree 25/2008 and, lacking those – or in order to integrate them – through the acquisition of other sources of information indicating the reasons for the decision reached. The statement on the website of the Ministry of Foreign Affairs and International Cooperation alone, aimed at informing tourists and foreigners on safety and security in a foreign country, is not sufficient *per se* to exclude the dangerousness of the country concerned (Court of Cassation –Sixth Civil Division – Order 16202/2012).

35. As for such an assessment, the Court of Cassation (Section 6-1, Decision 4230/2013) ruled that, "in case of a decision of denial - by the competent Territorial Commission - of an application for the recognition of the refugee status and which is not challenged by the applicant, an objection to expulsion based on Article 19, para.1, of Legislative Decree 286/1998 shall be founded on humanitarian grounds that have to be new or different from those examined in the proceedings relevant to the application for international protection". The novelty does not need to be strictly objective, since it can even be a subjectively new fact - in the sense that it has come to one's s knowledge later -, which incorporates an element of risk or a fact that had not been evidenced before the Commi[illegible]on, but which however concerns a danger in case of return (e.g. being subjected to tort[illegible]r inhuman or degrading treatment) that had already been submitted before the Commission but without the support of the new facts.

36. Consequently, the requisite "novelty" is satisfied not only by facts that are subsequent in time to the unchallenged decision of denial, but also facts that had been ignored by the Territorial Commission, either because they had not been submitted by the applicant or had not been duly verified by the deciding Authority. Therefore, when deciding on an expulsion order challenged on the basis of the prohibition to expel provided for in Article 19, para.1, of Legislative Decree 286/1998, the competent judge *(giudice di pace)* has the duty - in compliance with the obligation to cooperate in the investigations which s/he has, just as much as the judge competent for international protection - to verify any circumstances which did not arise before the territorial Commission because the applicant was unable to indicate or submit them and the Commission was unable to verify them. Along with this approach, and in conformity with the conventional principles for the protection of fundamental rights, no objection can be made to the Court's assessment activity. It is common knowledge that, in the performance of his/her judicial role, a judge is

under the obligation to look for, and has the freedom to choose, the evidence on which s/he will base his/her judgment.

37. The *ratio* of Directive 2008/115/CE is the establishment in EUMS of "*an effective removal and repatriation policy, based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity*". The Constitutional Court, in its judgment 78/2007, on the application on illegal immigrants, of measures alternative to detention, reaffirmed that: *"failure to hold legal authorisation to stay within the territory of the State"* constitutes *"a* subjective *condition that is not per se unequivocally symptomatic [...] of any particular social dangerousness"*. The Court of Cassation (Judgment 27310/2008) ruled that, in compliance with the Geneva Convention and the New York Protocol, although the applicant has the burden of proof as to his/her statements, the judge has a duty to cooperate and is entitled to broader investigative powers in ascertaining the relevant facts for determining refugee status, as provided *inter alia* by Directive 2004/83/CE.

38. Pursuant to the above provisions, if such independent research is not successful or if some of the applicant's statements are not susceptible of being substantiated, "*if the applicant's account appears credible, he should, unless there are good reasons to the contrary*": *"be given the benefit of the doubt"*. By Judgment 3898/2010, the Court of Cassation ruled that the prohibition of expulsion or refoulement pursuant to Art.19, para.1, Legislative Decree 286/1998 imposes that the competent justice (giudice di pace) deciding on an appeal against an expulsion order shall examine the actual danger indicated by the appellant, since that provision contains a humanitarian measure of a barring character whereby its beneficiary has the right not to be placed again in a highly risky environment for him/her, if the alleged condition is actually ascertained by the judge.

39. The Supreme Court has recently reiterated the need for strict compliance with Art.3 ECHR and, thus, to grant international protection to whoever may be exposed to the risk of life and torture in his/her country of origin regardless of the seriousness of the crime committed in Italy and of his/her lack of collaboration with Italian Authorities (Civil Section 6, Decision 21667/2013).

40. As for the case of Mr. N.O. M. H., alias Abu Omar, by Decision, dated September 19, 2012, the Court of Cassation confirmed the Decision of the Court of Appeal in Milan regarding the conviction of 23 US defendants (CIA officers). At the same time, as for Italian SISMI officers, initially convicted by the Court of Appeal in Milan to detention penalty (besides being legally disqualified and banned from public offices), following a complaint filed by the Presidency of Ministers' Council before the Constitutional Court, the latter ruled that the secret of State refers to the supreme interest of protection of the national security (Rulings 106/2009 and 24/2014). Accordingly, the Court of Cassation decided for the acquittal of the SISMI officers, on February 24, 2014.

In respecting the competence and the discretionary power of the President of Ministers' Council, the Constitutional Court has stressed that nobody can halt the public attorney to investigate but judicial Authorities cannot use relevant evidence when covered by State's secret. Accordingly, the Court of Cassation acquitted SISMI officers given the prevailing State's secret (Act 124/2007). However, the complaint lodged by Mr. Abu Omar and his wife v. Italy is pending before ECtHR.

41. As for the violations related to expulsion, there are various applications before the Strasbourg Court that has delivered various Decisions so far: the Court stressed the obligation not to return a person to a country where there is an actual risk of torture or ill-treatment, not only in the cases in which the expulsion has actually been carried out, but also if it has not. In light of the cases of Ben Khemais; Trabelsi; Toumi and Mannai v. Italy – who, inter alia, benefited from the safeguards contained in the European Convention at

the meetings of the Committee of Ministers 2010 (Resolutions CM/Res DH 2010 - 82 and 83) -, Italy had already given assurance that, where it needed to proceed to the expulsion of a terrorist on which the Court had already issued an *interim* measure, it would preliminary request the Court to lift said measure and support the request with all relevant documents (save confidential documents) proving the dangerousness of the person concerned and the alleged danger for the security of the State in case of non-expulsion or the absence of any risk in the country of destination.

42. Further to Mr. Mannai's expulsion, it was issued a ministerial Memo, dated 27 May 2010, to raise judges' of the peace awareness about the principles on expulsions laid down by the European Court's case-law and notably on the need, when validating the relevant measure: to make a thorough judicial checking of it; verifying not only that it is formally correct, but also that it complies with IHRL, or, specifically, with ECHR (Sect. 6 civ., 20514/2010).

Articles 5, 7 and 9

43. As regards extradition proceedings, the defendant often complains about a violation of his/her fundamental rights (concerning the danger of inhuman or degrading treatment) alleging that the Extradition Order is illegal since it was issued without that "the surrendering Government has preliminarily obtained guarantees in respect of the surrender of the defendant to a Country that has already been condemned for inhuman treatment". Italian judicial procedure provides that the assessment of whether the conditions for granting extradition are met (Art.703 *et* ff. CCP) is to be made by judicial proceedings.

44. The extradition order is thus the concluding act of a complex procedure, composed by a judicial phase followed by an administrative one, where both phases are regulated specifically and in detail by CCP. Relevant provisions provide that the person concerned shall participate fully in the procedure, so that it has full knowledge of the proceedings and thus can interact with it, either personally or through its defence counsel. The person is in a position of true "equality of arms". In practice, the extradition order issued by the Ministry of Justice is to be regarded as the due and finalizing act of a complex and structured judicial and administrative procedure, which closes with the acknowledgement that the conditions for surrendering the person sought are met. As a matter of fact, the cases in which the Ministry of Justice has the faculty to refuse extradition, even when the relevant judicial authority has given a favourable decision, are specified and detailed in Article 698, para.1, CCP, and are essentially the cases of persecutory or discriminatory acts against the person sought for extradition or of penalties or treatments that are cruel, inhuman or degrading, or that breach the fundamental rights of the person.

45. Art.696 CCP stipulates: "*1. The extraditions, the international rogatory (letter of request), the effects of foreign criminal sentences, the execution abroad of the Italian criminal sentences and other relations with foreign authorities, relating to the administration of justice in criminal matters, are governed by the rules of the European Convention on Mutual Assistance in judicial matters, done at Strasbourg on April 20, 1959, and other applicable international conventions in force for the State and by the rules of general international law. 2. If no such standards exist or do not state otherwise, the rules below are thus applicable*". Moreover, the time limit for issuing the extradition order and consequently for the taking over of the person to be extradited are not at the discretion of the Ministry, but are expressly indicated in the relevant legislation.

Article 10

46. Following the G-8 Events (2001), an in-depth State Police review process resulted in up-to-date basic, permanent and refresher programmes concerning both values and *modus operandi* vis-à-vis public order. Several activities have been promoted in order to support

Police officers' professional skills by raising continuous awareness of the principles of professional ethics, as strictly connected to the protection of human rights.

47. The relevant study and basic training programmes envisage "IHRL", including the analysis of the major standards and the way to effectively implement them - by and within State Police professional activities. This, in its many aspects, results in a specific area dealt with by all Police officers on duty who attend professional refresher courses. Training focuses on identifying the mission of Police within a democratic society and, thus, on: the human-centred vision of the State Police; the fight against any forms of discrimination; and the guidelines for Police officers concerning the respect for the right to life, the proper use of force, the principle of impartiality and the repudiation of any forms of torture or inhuman, degrading treatment. Further, ad hoc training tools support the Police personnel professional training activities and teaching materials, as provided by the Department of Public Security to the State Police offices.

In order to raise awareness, participatory methodologies are applied in addition to teaching materials on human rights, such as the European Ethics Code. Furthermore, by Decree of the Chief of Police, dated October 20, 2008, the Training Centre for the Protection of Public Order was set up with a view to enhancing the culture of public order through prevention and dialogue.

48. Guardia di Finanza has been developing specific activities: (in the course of the current year) 1. "Refugee protection, based on international and national law", financed by UNHCR, with the aim of training 240 staff personnel deployed to various Centres, including CARA and CIE at Piedmont, Friuli Venezia Giulia, Marche, Latium, Calabria, Sardinia, and Sicily; 2. Following specific exams, Corps' personnel working in public security and safety, must attend a structured 8-week course, aimed at obtaining the Anti-Terrorism and Ready Alert qualification. This course, aimed at setting a highly-specialized personnel with the ability to carry out all public order maintenance-related activities focuses on: adequate understanding of relevant behavioural and operational procedures; legal use of weapons and other coercion means - with attention to both public order-related scenarios and circumstances and the proportionate use of force; 3. (Yearly) specific training modules within the framework of "basic" training, as well as residential and e-learning advanced training on inter alia "Operational Methodologies Against Illegal Smuggling", (refresher) "Irregular migration-related Legal Framework and Participation in Search and Rescue Operations", as well as to gain the "Abroad Operation Specialists" diploma; 4. Guardia di Finanza has scheduled for 2015, "International Human Rights Law and Armed Conflict" courses, under the umbrella of the Italian Red Cross, for some 400 staff deployed at a regional level. This training will enable the participants to fully understand the typology of conflicts besides providing extensive knowledge of the legal framework during International Humanitarian Operations and overall respect for human rights.

49. Within this framework, mention has to be made of OSCAD and DEO-UNAR:

(a) Established in 2010, at the Ministry of Interior, OSCAD is operated by Police and Carabinieri to prevent and repress 'hate crimes'. Headed by the Deputy Director of the Department of Public Security/Central Director of Criminal Police, it is composed of officials from Police and Carabinieri, and aims at: overcoming under-reporting; alerting Police and Carabinieri; enhancing training and exchange of investigative information and best practices at the international level; monitoring discrimination; increasing awareness, in synergy with other relevant agencies; promoting communication and prevention initiatives. It receives relevant reports (oscad@dcpc.interno.it - fax 06 46542406 and 0646542407) from Institutions, professional or trade associations and private individuals; afterwards, it launches targeted interventions at a local level, to be carried out by the Police or *Carabinieri*; it also keeps contacts with relevant CSOs and Institutions, prepares training to qualify Police operators on anti-discrimination activity, and participates in training

programs with public and private Institutions; and, more generally, elaborates appropriate measures to prevent and fight discrimination (Under no circumstances, reporting an act of discrimination to OSCAD replaces a formal complaint with the Police). Among activities, emphasis must be placed on HRE and closer cooperation with DEO-UNAR, the LGBTI service of the Turin Municipalities leading the READY network, Amnesty International, Polis Aperta, Lenford Network, as well as - at the international level -, with OSCE-ODIHR (TAHCLE[1]), training of trainers on LGBTI and DEO-UNAR strategies on LGBT people's rights (and Roma inclusion). Between 2012- 2014, OSCAD trained: 350 Police Executives; 200 Police senior officers (Commissari); 340 Superintendents; and 4650 Agents; approx. 500 operators; 250 officers, 90 of whom were trainers. The same has been scheduled for 2015, for all young inspectors. By an MoU with MIUR dated May 2013, pilot-projects are envisaged also within the school system, starting with a High School in Rome.

(b) Within the Department for Equal Opportunities (DEO) of the Presidency of Ministers' Council, the National Office against Racial Discrimination (acronym hereinafter, UNAR) has been strengthened and its role expanded over the years. Since 2013, it is responsible for the protection against all forms of discrimination. It is engaged in: combating racism; promoting the integration of Roma, Sinti and Caminanti; and fighting homophobia and trans-phobia, with particular attention to multiple and intersecting forms of discrimination. DEO-UNAR works on and fight against hate speech and hate crimes whereas cases of discrimination on the grounds of racial and ethnic origin still remain the majority, with a total amount of 68,7% complaints (as at 2013). According to the yearly-collected DEO-UNAR's data, mass media are the most used means to disseminate discriminatory ideas (34.2%, compared to 19.6% in 2012). In particular, hate crime cases affecting specific ethnic minorities or foreigners have been recorded on the new social media. Also the xenophobic contents of social network have increased – as facilitated by anonymous format. Over the years, the Office supported and/or promoted various initiatives, such as the "Rome Charter", training for media, law enforcement and law professionals. More recently, it has been involved and is developing Action 2.2.3. "Combating different forms and manifestations of Racism and Xenophobia": this is a 18 month-project run by ARCI, in partnership with DEO-UNAR, CNR-ISGI, ANCI-Cittalia, Ministry of Interior-OSCAD, UNICRI, Romania – Romanian Federation of Journalists MediaSind, SOS Racismo Gipuzkoa, Fundatia Dezvoltarea Popoarelor, Francia - La Ligue de l'Enseignement, Spagna – University of Barcelona, UK - Race on the Agenda. Furthermore, to promote social inclusion and combat discrimination, DEO set up the Solidarity Fund for Protection against Discrimination, which enables victims of discrimination to access to judicial remedies by anticipating their legal fees. Unlike Equality Councillors, DEO-UNAR is not authorised to take legal action. However, it provides legal support to those NGOs with *locus standi* and admitted to its Register in accordance with Art.5 of Legislative Decree 215/2003 – which currently counts 560 Associations. Since 2010, it has been issuing opinions for the victims and the Associations representing them. As mentioned above, in recent years DEO-UNAR has been enhancing its tools through an integrated action in support of victims – also through an MoU with OSCAD. In brief, the assistance provided by DEO-UNAR focuses on the following activities: it informs victims of remedies that may be sought and encourages them to take action, also through the Associations authorized to act on their behalf (locus standi); it helps victims and the relevant Associations by formulating opinions; it monitors relevant judicial proceedings initiated through a report submitted to its Contact Centre. In addition to its website, by publishing opinions and recommendations, DEO-UNAR spreads information

[1] "Training Against Hate Crimes for Law Enforcement".

and raises awareness of the anti-discrimination legislation and the rulings of national and supra-national courts in order to ensure victims' protection.

50. Against this background, enhanced training programs in the field of human rights are ensured to all Forces. As mentioned earlier, under the revised Italian NAP on Women, Peace and Security, 2014-2016 (www.cidu.esteri.it), we extensively report on courses carried out by, among others: the Ministry of Interior; Guardia di Finanza; Carabinieri Corps (including within CoESPU and the use of material, such as the 2013 hand-book on "Protection of Human Rights in the Services"); and the other Armed Forces. Within this framework, a specific Unit on Gender Perspective has been set up at the Ministry of Defence. Plus, focus on HRE is also ensured: at the newly-established School for Magistrates; for social and health-care workers – including by the sectoral Plan on Roma Health, launched by the Ministry of Health on November 12, 2014, within the broader framework of the National Roma Strategy, 2012-2020, in accordance with EC Communication 173/2011; and for the penitentiary personnel. As for the latter, the Penitentiary Administration Department promptly translated and widely disseminated the Istanbul Protocol, across the country.

51. In the field of VAW and stalking, education-related initiatives have been developed within basic and advanced training:

(a) As for the Carabinieri Corps, basic training includes IHRL modules (for 2500 units, in 2013/2014). As for advanced training, it is worthy of mention as follows: prevention and Investigation of SGBV; training and awareness of counter-trafficking for peace-keepers; seminars (financed by DEO) for standardized relevant training for the various Police forces (some 1.650 units); specific seminars at the Carabinieri Officers School, from 2012/2013 onwards, with support from Sant'Anna School in Pisa; seminar for Territorial Units personnel on harassment (about 5,700 units); a training course, entitled: "Train the Trainer Workshop: Anti-Discrimination & Diversity and the Other Fundamental Rights in Police Training". Several other initiatives have been undertaken in this area, such as ad hoc two-week training programs for Territorial Units at the Advanced Institute of Investigation Techniques - for about 100 participants, each course -, with the aim of enhancing knowledge and identifying measures for preventing/punishing GBV. Last, relevant officers are involved in the ODIHR group of Trainers.

(b) The creation of a Section dealing specifically with harassment-related offences at the RaCIS (Forensic science laboratories of the Carabinieri Force), resulting from an agreement between the Prime Minister's Office, DEO, and Carabinieri. It is tasked with in-depth research and up-to-date strategies for preventing and combating violent behaviours, either sexually-oriented or persecutory. In this context, Carabinieri Corps organized seminars aimed at a standardized conduct when dealing with GBV-victims.

(c) In the basic training and refresher courses for the State Police, increasing attention is paid to assisting victims of domestic violence, stalking and abuse in the family. Attention is also paid to enhancing knowledge about IHRL, including protection of vulnerable groups - also of those to be deployed to conflict areas. More specifically, domestic violence and stalking fall within programs and refresher courses, which focus on: "Stalking and Crimes against the so-called Vulnerable Groups (children, women, and the elderly)"; monitoring and combating discrimination against minorities and the role of OSCAD; violence against women and children, and specific issues relating to the operational, legal and psychological impact of violence. From 2014, the Ministry of Interior envisages the organization of additional cycles for local investigative Police units at the 103 Police Stations, across the country.

(d) It is also worthy of mention the European Daphne Programme, aimed to combat all forms of violence against women and children. Various projects have been

completed under MuTAVI (Multimedia Tools Against Violence, conducted by the General Directorate of the Criminal Police Department of Public Security of the Ministry of the Interior, together with the Department of Psychology, University "La Sapienza" of Rome and the NGO, "Institute for the Mediterranean"). The purpose was to create and produce multimedia materials for training professionals, practitioners, and caregivers, such as police officers, lawyers, as well as socio-medical staff, who are responsible for first contact and support for victims of violence by their partner (Intimate Partner Violence - IPV). The ultimate goal was to raise awareness and promote prevention strategies against violence, in particular, IPV - in continuity with the European project AGIS, also called Victas, by which general strategies had been defined for Police Forces in their initial contact with victims of crime.

(e) Similarly, specific attention is paid to refresher courses and lifelong learning also for the Judiciary that, in recent years, through the School of the Superior Council of the Judiciary (established in 2012), envisages specific training initiatives. Since June 2013, specific training focuses on the assessment of evidence and investigation protocols for crimes against vulnerable groups, particularly in the field of stalking (with the participation of teachers, judges and special experts). The large participation of judges and decentralized Institutions ensures that programs are kept abreast of the current developments (in addition to holding courses that are specifically focused on IHRL).

(f) In general, training for specialized groups and the coordination of activities within judicial offices, particularly, the Prosecutor's Offices are designed to make the intervention of the judiciary as qualified and efficient as possible. At the same time, the training on "vulnerable groups" allows for a continuous exchange of information about crimes of violence, including a tentatively standardized interpretation of rules. There is also an initiative to draft MoUs, to improve links between all judicial bodies and care facilities, including anti-violence centres and hospitals.

52. A strong normative framework has been designed to prevent cases of excessive use of force:

- Police is duty-bound to: diligence, legality, correctness, and loyalty. Additional obligations and prescriptions[2] fall within disciplinary responsibility – the latter is also reflected in the military system – as linked with constitutional principles under Art.97 referring to the correctness of the public administration and the expeditiousness of the proceeding.
- The Carabinieri General Regulation envisages that the military servicemen shall always maintain an attitude appropriate to his/her status. Whatsoever form of ill-treatment, abuse or harassment by the military servicemen towards the population or those arrested must be considered as a very serious failure.
- Ad hoc Directives are issued, on a continuous basis, in order to prevent whatsoever inadequate conduct, especially during the arrest or the apprehension stage.
- In accordance with Art.582 CC on the ill-treatment of persons deprived of their liberty, relevant conducts by law enforcement officials are often pursued *ex officio*, even in cases of minor injuries (Abuse of authority over arrested or detained persons, private violence, abuse of office, forgery of documents).
- Since June 1998, the Department of Penitentiary Administration (DAP) has been ordering that when the medical personnel working in the prison facilities verifies the presence of bodily injuries during the medical examination of a prisoner's first entry

[2] Act 121/81.

or of an inmate, not only they are obliged to take note (in the Register defined as Model 99) of the outcome of the medical examination, but also of the statements made by the concerned party in relation to the circumstances of the ill-treatment suffered. The annotations included in the register, accompanied by any other observation useful for ascertaining the facts, must be immediately transmitted to the judicial authority, insofar as they fall within its competence. A monitoring system of all critical events, among which the injuries suffered by the inmates, has been instituted at the "Situations room" of DAP Office for the Inspection and Control Activity.

- The Carabinieri Corps issued ad hoc orders for all its Stations, with the aim, inter alia, of drawing the attention to the correct use of the "Register for persons detained in the security rooms" and "Sheet of rights" (the person detained or apprehended shall confirm in writing that s/he received a copy of this sheet).

- Over the years, Italy has been one of the co-facilitators of the international initiatives on human rights education and training culminated into the 2011 sectoral UN Declaration and, more recently, in the adoption of a new Council's Resolution on the World Programme on Human Rights Education (2015-2019). As reported, training activities, including HRE-related courses, have been introduced for all law enforcement agencies. Along these lines, DAP informed, in April 2008, all the prison facilities on the Istanbul Protocol, i.e. "Manual for an effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment", translated into Italian by its Office for Studies Research Legislation and International Relations. More recently, the same Ministry proposed the establishment of a National Guarantor of Detainees as later introduced by Act 10/2014.

- Last, renewed emphasis has been placed on HRE for personnel to be deployed across the country and abroad by the revised NAP on Women, Peace and Security, 2014-2016.

Article 11

53. As for the judicial safeguards of the arrestees (and the application of Art.104), Art.13 of the Constitution stipulates: "*Personal liberty is inviolable. No one may be detained, inspected, or searched nor otherwise restricted in personal liberty, except by order of the judiciary stating a reason and only in such cases and in such manner as provided by law. As an exception, under the conditions of necessity and urgency strictly defined by law, the police may take provisional measures that must be reported within 48 hours to the judiciary and, if they are not ratified within another 48 hours, are considered revoked and remain without effect. Acts of physical and moral violence against persons subjected to restrictions of personal liberty are to be punished. The law establishes the maximum duration of preventive detention*". Art.27, para.3, sets forth: "*Punishments may not contradict humanity and must aim at re-educating the convicted*". Accordingly, Article 606 and other provisions, contained in the same section of the Criminal Code, safeguard the individual against illegal arrest, undue restriction of personal liberty, abuse of office against detainees and prisoners, illegal inspections and personal searches. Other provisions include: Article 581 (battery); Article 582 (bodily injury); Article 610 (duress, in cases where violence or threat are not considered as a different crime); and Article 612 (threat). Even more so, the provisions under Article 575 (homicide) and Article 605 (kidnapping), to which general aggravating circumstances apply regarding brutality and cruelty against individuals and the fact of having committed these crimes by abusing of power and violating the duties of a public office or public service (Article 61, para.1, number 4 and 9). Moreover, the Code of Criminal Procedure contains principles aiming at safeguarding the

moral liberty of individuals: Article 64, para.2, and Article 188 set out that, "during interrogation and while collecting evidence, methods or techniques to influence the liberty of self-determination or to alter the ability to remember and to value facts cannot be used, not even with the consent of the person involved".

When considering the relevant legislative framework, it is necessary to recall a two-fold issue: the risk to punish less harsher than it can be done under the current CC (which generally adds the aggravating circumstances of brutality and abuse of power to the punishment foreseen for the general crime); and the difference between the behaviors already envisaged and the behaviors we may introduce is still blurred.

54. Procedurally, the Constitution prohibits arbitrary arrest and detention. The Italian legal system provides that a person may be placed under police custody when s/he is arrested in the act (*flagrante delicto)* or apprehended (Art.380 et ff. CCP) or under enforcement of an order of preventive custody, as issued by the judge, upon request of the Public Prosecutor (Art.272 et ff., Art.285 et ff. CCP). Art.24 of the Constitution stipulates that the right to defense is a fundamental right; and Art.27 lays down the principle of the presumption of innocence up to the final judgment. According to Art.111 of the Constitution (amended by Constitutional Law 2/1999), the law guarantees that a person, who has been accused of an offence, must be promptly informed, in a confidential manner, of the nature and the grounds of the charges moved against him/her, and be placed in the condition necessary for preparing his/her defense, as well as his/her right to be assisted by an interpreter should s/he does not understand or speak the language used during the trial. In implementing such constitutional rules, Art.386 CCP provides that "the judicial police officers and agents who have carried out the arrest or the apprehension, or to whom the arrested person has been surrendered, expeditiously inform the Public Prosecutor of the place where the arrest or the apprehension was carried out. They must also inform the person put under arrest or apprehended of his/her right to appoint a defense counsel. The judicial Police must promptly inform the private defense counsel or the Court-appointed defense counsel[3], as designated by the Public Prosecutor pursuant to Art.97 of the occurred arrest or apprehension." Pursuant to Art.143 CCP, the defendant has the right to be assisted by an interpreter, free of charge, also during the talks with the defense counsel. Art.387 CCP provides that the judicial Police, with the consent of the person arrested or apprehended, must inform without any delay the person's family of said person's arrest or apprehension. Art.388 CCP sets out the rules governing the questioning by the Public Prosecutor, of the person arrested or apprehended. S/he shall proceed with the questioning, in compliance with Art.64 CCP, and timely inform of the said questioning the person's private or Court-appointed defense counsel (Arts.96 and 97 CCP). S/he shall also inform the person arrested or apprehended of the acts under investigation, the grounds on which the measure is based, the evidence gathered against him/her and – provided that this does not cause any prejudice to the investigations – the sources of said evidence.

55. Further, Art.391 CCP sets forth the obligatory participation of the defense counsel in the validation hearing of provisional arrest or the arrest. Art.294 CCP rules the questioning of the arrested person or the person under provisional arrest on behalf of the judge, who, generally speaking, has to proceed immediately to the questioning, or, at any rate, no more than five days after the start of the custody measure, if s/he did not do so during the validation hearing (para.1). The precautionary custody loses immediately its efficacy in

[3] Further, according to Art.24 of the Constitution and Art.98 CCP, which provides for the defence of the indigents, Presidential Decree No. 115/2002 provides for legal aid in criminal action (Art.74 et ff.). For being admitted to legal aid, no particular conditions or formalities are required (a mere self-certification is sufficient, pursuant to Art.79).

case the judge does not proceed to the questioning by the above deadline (Art.302, para.1, CCP). The questioning before the judge shall take place with the obligatory participation of the defense counsel (para.4) and according to the terms provided for by Art.64 and Art.65 CCP, which contain the general provisions on questioning, in compliance with the constitutional writs mentioned above. By Art.104 CCP, the person who has been arrested while in the act of committing an offence or subject to provisional arrest (according to Art. 384 CCP) and the accused under precautionary custody, have the right to talk to the defense counsel immediately after their arrest, or provisional arrest or at the starting of the execution of the precautionary custody in prison.

56. However, Art.104, para.3, CCP, envisages an exception to said general rule: the possibility that the judicial Authorities, by means of a motivated decree, defer the exercise to confer with the defense counsel for a period of time not exceeding five days. Said postponement is allowed, as specified under the same Article, only in the presence of precise assumptions on which the measure is grounded, i.e. "the existence of specific and exceptional reasons for precaution". In case of arrest or provisional arrest, the same power is exercised by the Public Prosecutor until the arrested person or the person subject to provisional arrest is put at the disposal of the judge for the validation hearing (Art. 104, para.4). The jurisprudential enforcement of said rule is very strict, meaning that as results from the jurisprudence of the Supreme Court *(Court of Cassation)* – whose decisions cannot be challenged -, the rule has been considered of narrow interpretation (Judgement 3025/1992; judgement 1507/96; judgement 1758/95; judgement 2157/1994), with reference to the risk of tampering with evidence (Judgment division VI - 06/10/03 Vinci). In particular, mention was made of the fact that the measure of the judicial authorities which does not contain a detailed indication of the specific and exceptional reasons foreseen by the ruling, gives rise also to the nullity of the further questioning of the person under precautionary custody before the judge, according to Article 294 CCP, in case the arrested person was not in the position to talk to his/her defence counsel before said questioning.

(a) According to the Supreme Court, "the illegitimate postponement of the talk with the defense counsel and hence the infringement of the right provided for under Art. 104 paras.1 and 2, CCP, entails the infringement of the right to defense, to be considered within the framework of general nullity provided for under Art.178, letter c, CCP - nullity, which, according to Art.185 para.1, CCP makes invalid the questioning rendered by the arrested person, who has been illegally denied the right to talk before the defense counsel, with the consequences provided for under Art.302 CCP, i.e. the loss of efficacy of precautionary custody (Judgement 3025/1992, confirmed by Judgment Division VI-04/20/2000 Memushi Refat).

(b) The exceptional provision under Art. 104, paras.3 and 4, CCP does not affect the right of the arrested person to be questioned in the presence of the defense counsel (Indeed, Arts.391 and 294 CCP provide for the obligatory participation of the defense counsel in the validation hearing and the questioning before the judge).

57. The only case, in which there could be a temporary limitation of meetings, even with the defense counsels, occurs when the prisoner is subject to a measure of judicial isolation (Art.22, Penitentiary Act). Such a condition stems from an act of the prosecuting judicial authority and is connected with precautionary and investigative requirements when there is the risk of tampering with evidence. In this case, the decree imposing such measure shall indicate in detail the length and modalities thereof. In any case, if there is an order of deferral of the meetings with the defense counsel, such deferral shall not last more than five days (Art.104 CCP). However, even during the period of judicial isolation, the prisoner may have contacts with the prison guards, the surveillance magistrate and the medical staff, for reasons connected with their activities. From a substantial standpoint, this is a very last

resort measure, to be applied when given circumstances so require, as is the case with mafia-type related crimes.

58. In this context, mention should be also made of the fact that the Italian legal system considers the right of being assisted by a defense counsel as an inalienable right, along the lines of the mandatory nature of the technical defense (Arts. 97 and 98 CCP).

In brief:

(a) Warrants are required for arrests (Art.386 CCP), unless there is a specific and immediate danger to which the Police must respond without waiting for a warrant; ii. The person arrested or apprehended receives a communication in writing, which has to be clear and precise with the aim of informing him/her of his/her rights. Should s/he not understand Italian, it will be translated in a language that s/he can understand. The information about his/her rights can be provided also orally, should the translation in writing require a longer term - save his/her right to receive it in writing and to be provided expeditiously in accordance with Legislative Decree 101/2014; iii. The right to be assisted by an interpreter - since the beginning of the judicial proceeding pursuant to Lgs. Decree 32/2014; iv. Detainees are allowed prompt and regular access to lawyers of their choosing and family members; v. State provides a lawyer to indigents (Art.97 CCP). Art.386 CCP sets out that the criminal investigation department officers executing the arrest measures or guarding the person arrested must give prompt notice about that to the competent public prosecutor. They also inform the person under arrest about the right to choose a legal counseling. Thus, the criminal investigation department officers must give prompt notice of the arrest to the legal counsel who may be appointed *ex officio* by the public prosecutor, unless chosen by the person under arrest. Further, no waiver of legal defense is allowed to those who are put under arrest.

(b) The Act enforcing Art.111 of the Constitution provides, in its present wording that any person shall be informed of his/her rights in the language s/he knows since the beginning of the judicial proceeding. The Supreme Court reaffirmed that any judicial act regarding the suspect and/or the accused shall be null and void if it has not been translated in his/her mother tongue. Article 143 CCP, amended by Lgs. Decree 32/2014, envisages that the accused who does not understand the Italian language has the right to be assisted, free of charge, by an interpreter, regardless of the outcome of the proceeding - in order to understand the accusations against him/her and to be able to follow the conclusions of the case in which s/he is involved. Besides, the competent Authority appoints, when necessary, an interpreter to translate a printed document in a foreign language, a dialect not easily comprehensible, or upon request of the person who want to make a declaration and does not understand the Italian language. The declaration can also be in writing: in such a case, it will be integrated in the report with the translation made by the interpreter. An interpreter is nominated even when the judge, the Public Prosecutor or the officer of the Criminal Investigations Police have personal knowledge of the language or of the dialect, which must be interpreted. Further, judicial-related acts impacting on the personal liberty of the person concerned, such as verdict and pre-trial detention order, must be translated on a mandatory basis. Due attention is also paid to legal aid, the system of which was amended by Legislative Decree 115/02, which extends the access to legal aid in civil and administrative proceedings. Access to this institution is guaranteed whoever has an income below 11.369,24 €, per year. As for the criminal proceedings, Act 134/01 envisages the self-certification procedure for the income of the defendant. Such procedure is also extended to those foreigners who have an income abroad (In this regard, ad hoc information desks have been established at Bar Associations).

(c) Art.387 CCP envisages that upon agreement with the person under arrest or detained, the criminal investigation police must promptly inform his/her family members. Among the above procedural safeguards, the intervention of medical personnel is always

guaranteed when the person under arrest or detained requires medical assistance or when s/he explicitly requests it. In this regard, the Police underlines that the person deprived of his/her freedom has the right to request the presence of a physician who, regardless of such a request, shall be present in any case when the Police officer deems it to be necessary. Such indication emanates, inter alia, from Memos and internal Regulations of the Carabinieri Army Corps. Moreover, on the basis of the internal practice, the access to medical services for persons under arrest must be reported in the ad hoc Register, devoted to record individuals who are placed in security rooms, the so-called Registro delle persone ristrette nelle camere di sicurezza, under the item "AOB".

(d) In case of arrest (upon order by the justice), Art.104 CCP sets out, as a general rule, that the charged person being under pre-trial detention enjoys the right to hearing with his/her counsel since the beginning of the execution of the measure. Art.104 envisages, as an exception to such provision, the possibility for the justice to postpone, by motivated Decree, the exercise of the right to hearing with the legal counsel, up to five days. To guarantee the right to self-defense, the examination before the justice must take place with the participation of the legal counsel, in line with Art.294 CCP. In case of unjust detention, liberty tribunals regularly review cases of persons awaiting trial.

59. Besides information under Art.2, please find annexed herewith the Plan of Action by the Penitentiary Administration (hereinafter, DAP) submitted to the Council of Europe in 2014. Furthermore - as mentioned earlier -, within the current overall justice reform process, the Ministry of Justice has introduced a number of amendments mainly designed to limit the use of remand in custody and thus reducing prison overcrowding: Law Decree 211/2011; Act 94/2013; (following ECtHR's ruling on the Torreggiani case), Act 10/2014 provides for *inter alia* a "Special Early Release", a new specific judicial complaint under Art.35-b of the Penitentiary Act, and a National Ombudsman for detainees and prisoners. Following the conversion into law (on August 4, 2014) of Law-Decree 92/2014, among the various novelties, compensation for damages has been envisaged. In brief, the oversight magistrate can compensate the inmate with an eight-Euro per diem, should inhuman and degrading living conditions in jail be ascertained.

The latter envisages, inter alia: urgent measures for prison's population, including possible compensation for damages in the event of non-compliance (e.g. inadequate living conditions in prison's cells); a specific hearing in the event of a proceeding allegedly non-compliant with the Rules and Regulations of the Prison (Penitentiary Act) and causing a "current and serious prejudice to the exercise of rights"; the power to order Administration's fulfilment; compliance with the judgment; easier modalities for the execution of the home detention; additional limitation to remand in custody for adults. Plus, an ad hoc WG has been established at DAP, to constantly monitor the respect of the rate of inmates per cell, in light of the ECtHR's size-related indications.

60. The following figures are to be mentioned: (as at June 3rd 2014), there were approx. 59.500 inmates, of whom 800 under semi-liberty regime; no inmate lives in areas of less than a 3-square-meter size; persons benefitting from measures alternative to detention penalty amounted to 31,000; reduction of penalties for drug-trafficking and use-related crimes, with the transfer of drug-addicted inmates to rehab. Communities - in the coming months, approx. 5.000 will benefit from this measure (additional data as annexed).

61. As for the enforcement of custodial measures for the children in conflict with law, our I.P.M. (namely Juvenile Penitentiary Facilities) accommodate youths, both under pre-trial detention or sentenced to custody, who committed offence when they were under the age of 18 until the age of 25 (following the recent novelty introduced in August 2014 – conversion into law of Law-Decree 92/2014).

By introducing the principle of detention as *extrema ratio* for young offenders, Presidential Decree 448/1988 marks a decisive decentralization of imprisonment within the juvenile penal system. Life in our I.P.M.s is largely based on socialization and reciprocity between convicted juveniles, educational staff, cultural mediators and prison officers.

62. In order to ensure the youngsters conflicting with law their rights and overall to meet their needs, each I.P.M. carries out school, professional, cultural, sport and recreational activities aimed at promoting their upbringing and maturity. Compulsory vocational training to job activities is ensured under EU or national, regional Funds or from the budgets of Regional and local Authorities; and it is delivered by local bodies and cooperatives. Juveniles over 18 are directed to wage-earning jobs or training[4]

63. As for the individual treatment of juveniles, each child is granted a customized program. A team, made up of social workers, psychologists and pedagogy experts, conceives each individual treatment program and it is conditioned upon the approval of the Sentencing Judge. Specific attention is paid to health education, which includes the treatment of any disease, as well as general prevention plans: each Centre secures the regular presence of one physician and one or more nurses. With the Reform of the Penitentiary Health Care Sector, implemented by DPCM 230/2008, the health functions carried out by the Department of Prison Administration and the Department of Juvenile Justice, have been transferred to the National Health Service. Thus, ASL ensures health-care and psychological support to children involved in the penal system through specific agreements. At the national level, this has been identified within the Unified Conference of Regions and Local Authorities, through ad hoc agreements, including, as a way of example, "Guidelines for the operations of the National Health Service to protect the health of detainees and inmates in prisons and juveniles subjected to criminal action".

64. As for the shift of competence between the Ministry of Justice and the Ministry of Health, mention should be also made of the process to overcome the Judicial Psychiatric Hospitals (acronym in Italian, OPG). The above DPCM stipulates the following: to establish and to implement wings within prisons, dedicated to the care of mental health and intended to accommodate accused prisoners and finally sentenced prisoners affected with mental illness which intervened before or during the execution of the sentence, pursuant to Art.148 CC; to accommodate those offenders under psychiatric observation pursuant to Art.112, para.1, DPR 230/2000; and to accommodate finally sentenced offenders having their sentence reduced because of their partial mental illness pursuant to Art.II, paras.5 and 7, DPR 230/2000. The Italian Penitentiary Administration has identified those wings within several prisons and many of them have already been activated; the internees coming from the OPGs will be assigned to the Italian Region of their origin, and the Mental Health Departments of the Regional Health-care Services will take them under their responsibility and care, through therapeutic and rehabilitation programs aimed at their resettlement into community upon release, either in healthcare structures or under assignment to local psychiatric and social services; for those subjects who are assessed to be very dangerous for the society, the security measures of hospitalisation in OPG and of assignment to prison Hospital will be enforced in residential healthcare facilities (the so-called REMS — *Residenze per l'Esecuzione delle Misure di Sicurezza).*

[4] Each I.P.M. is divided into 4 functional areas: technical/pedagogical, security, administration and accountancy. In its monitoring capacity, the I.P.M., through its socio-psycho-pedagogical team, gather information about the personal, familiar, social and environmental conditions of each young offender to provide the judge with useful elements to define the criminal responsibility, understand the degree of awareness of the offence committed and to set up specific action plans for each juvenile.

65. Due to the problems met by the Regions in arranging the necessary facilities, Law-Decree 24/2013 postponed the deadline for the closing down of OPGs. **By Act 81/2014,** OPGs have been finally closed on March 31, 2015.

(a) The National Strategic Plan for Mental Health (Ministry of Health, 2008) mentioned forensic inpatient units as one of the elements requiring special attention within the framework of mental health services. In this respect, the National Strategic Plan for Mental Health suggested the following:• People admitted to OPGs (especially people acquitted with total/partial mental default) should be reassessed and a category of inmates should be set up for rapid discharge and possible use of the NHS services, especially mental health services; • Inmates should receive care from their first admission in an OPG in the perspective of managing their rehabilitation and social reintegration, with active collaboration with relevant Departments of Mental Health; • The discharge of inmates who have come to the term of their security measure should be planned with the Regions involved as well as with local actors in order to ensure effective social inclusion; • On a regional level, all necessary actions must be taken in order to implement alternative projects related to the admission in OPGs through the continuity of the relationship between the Departments of Mental Health and the Courts of Justice; • Inmates formerly admitted in penitentiary facilities before being admitted to OPGs should be reintegrated within their former facilities with the guarantee that all relevant health interventions and rehabilitative programmes would be performed in the institutes of punishment.

(b) Pursuant to Art.82 of the Italian Constitution, a Parliamentary Commission of Inquiry on the efficiency of the National Health Service was set up in 2008, in order to both monitor the quality of public and private health-care services across the country, and control the implementation of health policies – thus, providing the Parliament and the Public Administration with comprehensive indications on the state of health-care services provision in Italy. Following the above-mentioned recommendations contained in the National Strategic Plan for Mental Health (Ministry of Health, 2008), some of the work undertaken by said Commission was devoted to OPG. Between 2008-2011, it organized regular spot inspections into each of the six OPGs. Then, it published an evidence-based "Review of the living conditions and health-care standards within Italian OPGs" - aimed at encouraging the actual transfer of responsibilities from the Penitentiary Administration to the NHS in the Psychiatric Hospital of Barcellona Pozzo di Gotto; the revision of the mental health legislation; and the subsequent overrun of the OPG model (inter alia, to avoid the so-called '*ergastolo bianco*', Law Decree 52/2014 converted into Act 81/2014 sets a threshold to the maximum duration of a detention-type security measure, meaning that it cannot exceed the maximum penalty envisaged by law for the crime committed; the review has also suggested that the CC adopting distinct custodial measures with respect to sane and insane patients should be replaced by a single approach).

66. Other concrete actions include: the establishment of National Commissions (Tavolo di Consultazione permanente sull'attuazione del DPCM 1 aprile 2008, and the Comitato Paritetico per le problematiche degli Ospedali psichiatrici giudiziari); A three-month reporting to Parliament on the on-going process by the Ministry of Health; and alternative health-care facilities are under construction in all Regions. To this end, the Italian Government earmarked funding for 272 million Euros.

67. As at March 25, 2015, the inmates in OPG were 698, of whom 623 men and 75 women. In accordance with Act 81/2014, the detention-type security measures, including at REMS, cannot exceed the duration of the detention penalty. Finally, the Regional Authorities of the Penitentiary Administration have been invited to make available the Mental Health Care Areas for prisoners and detainees. As reported above, last March 2015, OPGs have been formally closed down.

Articles 12 and 13

68. As for collection of data (relevant data annexed herewith), the National Office of Statistics (ISTAT) recalls that in Italy there is a data-collection and monitoring system of the complaints on: simple and aggravated injury; physical and sexual violence; and trafficking. These figures, of an administrative source, are yearly collected and refer to: complaints, acquittal and condemnation verdicts.

69. A specific data-collection action has been envisaged under the Extraordinary National Action Plan against VAW, 2015-2018.

70. Furthermore, ISTAT published, on June 5, 2015, its latest survey on VAW, as commissioned by the DEO:

(a) The 2006-ISTAT survey reported that 6.7 million women, aged 16- 70 (31.9% of all women), had been victims of violence at least once in their lives. Five million women were victims of sexual violence and one million of rape or attempted rape. ISTAT also estimated there were 74,000 cases of rape or attempted rape, of which 4,500 were reported to the Police. Partners commit approx.23% of sexual abuse-cases (available at *http://www.istat.it/en/archive/34562*).

(b) According to "Violence against women: an EU-wide survey" presented by the EU FRA Agency in March 2014, 19% of women in Italy have experienced physical and/or sexual violence by a current or former partner since the age of 15; 17% by a non-partner; 38% by any partner (past or present); the prevalence of stalking since the age of 15 amounts to 18%; and the prevalence of sexual harassment since the age of 15 is 51%.

(c) On June 5, 2015, ISTAT released the follow-up survey on VAW in Italy, the results of which are being disseminated also among migrant women. ISTAT carried it out in 2014, on a sample of 24.000 women, aged 16-70. As for migrant women, the most affected ones result to be from: Romania, Ukraine, Albania, Morocco, Moldavia, and China (according to privacy protection law, information about ethnic origin and religious affiliation could not be collected (http://www.istat.it/it/archivio/157059)).

71. Data regarding "Practice of female genital mutilation" are very low because only recently this topic has been regulated.

Number of prosecutions by type of crime and by known/unknown perpetrators. Years 2009-2012

	2009		*2010*		*2011*		*2012*	
	charged	not charged	charged	not charged	charged	not charged	charged	not charged
Practice of female genital mutilation	1					1	5	

	2009						2010					
	Charged			Not charged			Charged			Not charged		
	Sex			Sex			Sex			sex		
	Male	Female	TOT	Male	Female	TOT	Male	Female	TOT	Male	Female	TOT
Practice of female genital mutilation	2	0	2			0			0			0

	2009			2010			2011			2012		
	charged		not charged	charged		not charged	charged		not charged	charged		not charged
	2011						2012					
	Charged			Not charged			Charged			Not charged		
	Sex			Sex			Sex			sex		
	Male	Female	TOT	Male	Female	TOT	Male	Female	TOT	Male	Female	TOT
Practice of female genital mutilation			0	0	1	1	5	1	6			0

Sentenced people
Sentenced crimes. Year 2008-2012

Crimes sentenced	2009	2010	2011	2012
Practice of female genital mutilation	9	12	16	1

72. As discussed before the Committee in 2007, by Act 7/2006, DEO has been tasked with promoting and supporting the coordination of relevant activities for the prevention, victims' assistance and eradication of FGM, as well as with the collection of data and information at the national and international levels. In addition to international campaigns[5], numerous are the domestic projects to fight against FGM financed by the DEO and Ministry of Health: as for the former, this specifically allocated 4 million Euros for local awareness-related projects. DEO also launched the national campaign, "*Nessuno Escluso*" for immigrant parents to make them aware of risks to which they expose their children. On the basis of the experience gained through the implementation of the projects funded by DEO, following relevant Call for proposals, in January 2011 the second relevant Strategic Plan was drafted, in accordance with Art.2 of Act 7/2006. In February 2011, this Plan, shared also with the main CSOs, as well as with local Authorities, has an allocation of resources amounting to 3 million Euros, to be used for the development of the following areas of intervention: development of experimental and innovative intervention models for the implementation of a national strategy, aimed at facilitating the social integration of women and children, victims or potential victims of FGM; provision of specific training courses for professionals working in this field or in other related sectors, aimed at facilitating the relations between institutions and the African migrant population; promotion of information and awareness-raising activities.

The contents of the Second Strategic Plan were included in a shared document signed by DEO and the Italian regional Authorities: the MoU on the criteria for the allocation of resources, the objectives, implementation and monitoring of the intervention system is to be mentioned, as adopted by the State-Regions Conference, on December 6, 2012.

73. As for the additional measures aimed at adequate investigations, the T-4, "Tutela dei Diritti Umani nei servizi d'Istituto" handbook by the Carabinieri, envisages the involvement of the Operations Office at the Carabinieri HQs. that will contact the competent authorities, either penal or disciplinary. As for very serious cases, an initial

[5] Italy supported the "END FGM" European campaign, promoted by AI. As for the international campaign against FGM, Italy is strongly committed to eliminating this practice, under both the political and development cooperation points of view. Italy has always distinguished itself within the framework of this campaign and has become a privileged link with the African countries that have submitted the Resolution on FGM to the United Nations General Assembly. The Resolution was adopted on 26 November 2012 and co-sponsored by over 110 States (including 50 African countries).

investigation can be decided in accordance with Art.552 of the Military Code. The above publication reiterates the modalities for the use of force, in line with international standards. Likewise, publication P-11, "Procedimenti d'azione per i militari dell'Arma dei Carabinieri nei servizi d'istituto" reiterates the use of force as an exceptional measures and expressly recalls the European Ethical Code-2001. Plus, in drafting relevant guidelines with regard to coercion measures (vis-à-vis persons, such as the drug addicted), by Memo 1168/483-1-1993 dated January 2014, the Operations Unit of the Carabinieri General Command recalls the principle of proportionality[6].

74. As for the Naples, Genoa and Val di Susa cases, the most recent Decision refers to ECtHR, with regard to Mr. Cestaro v. Italy, dated April 2015:

(a) As for the events in Naples-2001, last March 2015 the motivation supplementing the Court of Cassation verdict was deposited (Verdict 11071/15, dated 9.10.2014/16.3.2015) – though not yet published. From a historical standpoint, the Tribunal of Naples found guilty, in 2010, 10 out of 21 defendants, mainly on the ground of abuses committed against protesters at Ranieri Barracks, in Naples. The Court of Appeal declared in 2013, for eight of them, the statute of limitation since two defendants had previously renounced to that institute. However, the Court of Appeal did recognize the compensation for those victims who had brought the civil action into the penal proceeding (*persone offese*);

(b) As for Genoa-2001-related events, on April 7, 2015, ECtHR issued a condemnation verdict in the case of Mr. Cestaro v Italy, which has been published in Italian on the website of both the Ministry of Justice and the Court of Cassation (Italgiureweb). Mr Cestaro was among the protesters surrounding the G-8 summit in Genoa, from 21st to 22nd July 2001. From the 21st to 22nd July 2001, Mr. Cestaro and other protesters housed in a school, where he and others were ill-treated (para.82). The actual aim of the Police's mission was to search the school for evidence that could lead to the identification and possible arrest of members of the "black blocks" (para.182). Mr. Cestaro was subjected to repeated kicks and beatings with the baton, which is considered a potentially lethal weapon. As a result, Mr. Cestaro suffered multiple fractures and a permanent impediment in his right arm and right leg (para.178). The Court specifically observes that the protesters in the school were calm and did not resist the violence of the Police (para.186). Based on these grounds, ECtHR deemed that the treatment amounted to torture as understood in Article 3 ECHR (para.190). As for the specific cases relating to the Bolzaneto events, complaints have been lodged with the ECtHR and are pending before it. At the domestic level, the Tribunal in Genoa issued the first instance verdict on July 14, 2008, at the end of a very long proceeding concerning 165 *persone offese*. It convicted 14 out of 45 defendants by stating that despite the lack of the formal crime of torture in the CC, the conduct under reference reflects the features of inhuman and degrading treatment. It therefore envisaged an interim compensation amounting to 10,000 Euros for each victim save Ms. A.K., who would receive an interim compensation of about 15,000 Euros due to the severity of the harassment. The civil responsibility was then extended to the respective Ministries in accordance with Arts.28 Cost. and 2049 of the Civil Code. The Court of Appeal in Genoa confirmed that verdict, on March 3, 2010, by considering "the complexity and the extent of the events, clearly perceived in the body and mind of the victims as cases of torture and/or inhuman and degrading treatment". Unlike the Tribunal, the latter stresses that "the specific intention (*dolo specifico*)" for each of the conducts is not a requirement to be fulfilled given the lack of the formal crime of torture in the CC; plus, all conducts under consideration are

[6] As for the identification code to be displayed by all law enforcement officials, Bill 1307 is currently before the Senate.

to be considered as strictly linked one to another in addition to the link between collective perception/reaction and the impact thereto on the victims. It thus become relevant the omission reinforcing the conduct of those that were perpetrating a positive (*Latin, facere*) criminal conduct. Nevertheless, the Court also noted that most punishments were statute-barred; and for the remaining conducts, the Court envisaged specific penalties besides condemning all the defendants to compensate the victims for damage, together with the Ministry of Interior, the Ministry of Justice and the Ministry of Defence (compensation ranging between 5,000 - 30,000 Euros). By verdict (R. No. 38085/12) dated June 14, 2013, the Court of Cassation confirmed the second instance verdict with regard to the events occurred in Bolzaneto, reiterating the specific responsibility of the senior officers who were in that Barracks and failed to stop the conduct.

(c) As for the Val di Susa-related events 2011, the Tribunal in Turin issued a verdict in January 2015, by which it has condemned 53 protesters to both detention and pecuniary sanctions. Appeal against this verdict it is expected that it will be lodged soon.

Article 14

75. In addition to information provided under Art.1, mention has to be made of the Fund established in accordance with Legislative Decree 24/2014 for the victims of trafficking (See information under Art.16), as well as the recent Fund established by DEO, to support the victims of discrimination during relevant judicial proceedings.

Article 16

76. Immigration is an opportunity for enriching Italy, though the massive flow of migrants remains a challenge. As for migrants' landing by sea, between January-September 2014, 136.905 migrants reached Lampedusa Island, of whom 10.000 unaccompanied minors. According to UNHCR, 170,000 migrants arrived in 2014, of whom 63,000 applied for asylum. In the first five months of 2005, approx.47, 000 persons arrived, with an increase of 12% - if compared to the previous year.

77. In 2013 only, Italy allocated 190 million Euros, to which to add, by Law Decree 119/2014, 62,700,000 more million Euros.

78. Without a specific legislation, Italy increased its reception system up to 61.536 units as at September 30, 2014. Between January–September 2014, 39,450 migrants applied for international protection. As for relevant statistics, between August 2013-September 2014, 67% of the applications submitted to the territorial Commissions (the latter increased from 30 to 50) were accepted. To ensure transparency, in all Commissions there is a UNHCR representative. If a decision is not made on the individual case within six months – period during which the applicant can be accommodated by the State – s/he will get a residence permit, allowing him/her to work. Italian legislation also provides humanitarian protection to individuals who may not qualify as refugees or entitled to subsidiary protection, under the 1951 Convention and the European law, but who cannot be repatriated for humanitarian reasons (usually this is a one-year long permit renewable until the humanitarian need remains).

79. The Italian reception system consists, at the first level, of 14 Reception Centres and Centres of first aid and reception. These structures provide first aid to migrants landing by sea and are mainly located in the sea towns. CIEs are mainly devoted to identify migrants. Should, at the expiration of the detention period in a CIE the expulsion order not be executed, the Police superintendent must release the foreigner and order him/her to leave the country, within a seven day term. Should the individual fail to comply and be apprehended by the Police, the payment of a fine between 10,000-20,000 Euros can be ordered. Afterwards, s/he can be detained in a new CIE and be subject to another expulsion order.

80. Italian law establishes minimum conditions for detention: Legislative Decree 286/1998, Article 14.2, provides that detainees in CIEs must be detained in a way that guarantees the necessary assistance and full respect for dignity. Presidential Decree 394/1999, Article 21.2, further provides that detention Centres should provide detainees essential health services, activities for their socialization and freedom of worship. Furthermore, the Ministry of Interior has developed Guidelines, which detail all services to be provided and items to be distributed in CIEs.

81. Following identification, asylum-seekers are hosted for an initial period (from 20 to 35 days depending on the influx of migrants) in specific Reception Centres for asylum seekers (CARA), which are open to visitors and may be left by the guests during the day. CARAs also provide legal assistance, Italian language teaching, healthcare, food and other essential services. Applicants housed in a CARA have the right to receive visits from UNHCR, relevant CSOs, lawyers, family members or Italian nationals who have been authorized by the competent Prefettura. After the initial period in CARA Centres, refugees and asylum-seekers are hosted in the Asylum-seekers and Refugees Protection System Network (acronym, SPRAR), managed by local Authorities and financed through the National Fund for Asylum Policies and Services (FNPSA), comprising also the European Refugees Fund, managed by the Ministry of the Interior. The Network relies on facilities where refugees and asylum-seekers are hosted and provides additional services: linguistic and cultural mediation; job orientation; multicultural activities; and legal aid.

82. This has increased its capacity from 3.000 to over 18.000 persons, by 30th September 2014, thanks to an extraordinary funding of approx.60 million Euros.

83. From a legislative standpoint, Italy has translated all the EU asylum-related Directives; and two recasting Directives are going to be transposed: Directive 2013/32/EU on common procedures for granting and withdrawing international protection; and Directive 2013/33/EU laying down standards for the reception of applicants for international protection.

84. As for "illegal immigration", Constitutional Court (Judgment 249/2010) removed the status of illegal immigration among aggravating circumstances. In April 2014, Parliament approved Act 67/2014, which provides for the decriminalization of illegal immigration, to be considered as an illegal administrative conduct save those cases inherent to administrative measures, such as expulsion procedures already adopted. Illegal immigrants are repatriated upon individual examination: immediate repatriation is nevertheless envisaged if there is a risk of absconding or if the alien is socially dangerous or has applied evidently without foundation or fraudulently for a residence permit. Otherwise, a time limit is granted for the alien who makes such a request to voluntarily leave Italy. As above noted, voluntary and assisted repatriation programmes have been set up.

85. In 2014, the Ministry of the Interior prioritized the monitoring of all Centres for migrants and a study to improve their management. A Bill reducing the present maximum period of administrative detention from 18 months to three months is before the Parliament.

86. The legal framework governing detention pending deportation has undergone important changes. In particular, Act 129/2011 increased the maximum period of detention, previously set at 60 days, to six months; and the statutory maximum duration, under certain circumstances, to 18 months. Following the *Ruperto Commission report* endorsed by the Minister of Interior in 2013 - by which it had been proposed that the maximum period of detention be reduced to 12 months -, at the end of 2014 the Italian Parliament approved Act 161, which envisages the reform of immigration detention. The most relevant aspect is the reduction in the maximum period of migrants' detention. By the new law, the maximum duration a foreign national may be detained in a CIE has changed from 18 months to a strict

limit of three months. This new maximum is reduced to 30 days if the foreign national has already spent three months or more in prison. Moreover, the reform has replaced the system of judicial control on prolonged detention. The law now requires that after the initial 60 days—after the expiration of the first detention period—further time in a CIE has to be supplemented by concrete facts showing the possible identification of the foreign national, or that continued detention is necessary to arrange his/her return. However, as mentioned above, even in such cases, the maximum period of detention in a CIE cannot exceed a 90-day term. This reform is based upon a case-by-case evaluation in line with the European Return Directive.

87. To reduce the stay in the CIE, Act 161/2014, which amended Art.13 (administrative expulsion) of the Unified Text on Immigration, sets out that the foreigner undergoing expulsion by the *Prefet* can be returned to those EU countries with which Italy has signed specific agreements, including on a bilateral basis. This Act, by amending Art.14 of the above Text, envisages for those foreigners that are brought to jail for whatsoever reasons for a 90-day-period can be housed in the CIE for no more than 30 days. At the same time, the prison administration must request information about the identity and the nationality of the person concerned to the Head of the local Police HQs. in charge of initiating the identification procedure, including by involving the consular authorities of the country of origin. To this end, following a testing phase, DAP-Ministry of Justice and the Ministry of Interior signed a MoU, to also acquire information about the social and family situation of the person concerned with the aim of facilitating reintegration. By Memo GDAP PU 043667 dated 17.12.2014, DAP has instructed all detention facilities to ensure a coordinated action.

88. In terms of services-supply, in 2006 the Praesidium project was launched; and since 2012 it operates in all governmental Centres for immigrants. The Praesidium project is implemented by UNHCR, IOM, Save the Children and the Italian Red Cross, with the support of the Italian Ministry of the Interior, and contributes to a protection-sensitive reception system for aliens landing by sea.

89. Praesidium has proved to be an effective operational model, by which to provide: legal counselling and information on Italian legislation with regard to irregular migration, trafficking and enslavement, regular entry procedures, the submission of applications for international protection, opportunities for voluntary or assisted return. It helps identifying vulnerable groups, reporting them to the competent authorities besides monitoring reception procedures.

90. As for integration policies, the National Programme of Action for the new Fund on Asylum, Migration and Integration, 2014-2020 (promoted by the EU within the European Funds framework), is currently being finalized. € 500 million are available and € 310 million are allocated by EU. It focuses on the comprehensive management of migration flows, including asylum-seekers, legal migration, integration and repatriation of illegal foreign migrants (a wide consultative inter-institutional to define global strategies for the inclusion of migrants is on-going).

91. As for the fight against VAW, in addition to the information above provided, over the last four years, DEO has been committed to promoting and coordinating relevant Governmental action, including the elaboration of the new NAP on VAW, with an integrated multidisciplinary approach - following ratification of the Istanbul Convention, by Act 77/2013. Italy was one of the first States to ratify it, besides committing to sensitizing other countries to do likewise. In line with this Convention and prior to its entry into force (August 1, 2014), on August 14, 2013, Italy adopted Law Decree 93, converted into Act 119/2013 on Urgent Measures in the field of public order and "fight against gender-based violence...".

92. By amending both CC and CCP, the above Act introduces more effective measures aimed at: preventing VAW; protecting the victims and their children; and punishing the perpetrators more severely.

93. From a legislative standpoint, it is worth-mentioning as follows: in 2009, Law Decree 11/2009, converted into Act 38/2009, introduces the crime of stalking (Art.612-b CC). With the aim of preventing and further protecting victims of stalking, a new administrative measure "warning (ammonimento)" has been entrusted to Questore, in case the victim does not want to take action against the offender. Stalkers shall be punished by imprisonment from six months to four years. Penalty is increased if the offence is committed by a spouse, who is legally separated or divorced, or by a person previously engaged in an emotional relationship with the victim. Penalty is also increased if the crime is perpetrated against a minor, a pregnant woman or a person with disabilities. In order to enhance the fight against stalking, the then Minister for Equal Opportunities and the Minister of Defence signed an MoU in January 2009, by which a specific Unit has been established at Carabinieri Corps. Act 172/2012, ratifying the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention), amended Art.572 CC "Mal-treatment against family members and cohabitants" and provided for harsher penalties (from two to six years of detention). Furthermore, it doubled the time-limit (from ten to twenty years), within which the victim is entitled to report sexual abuse to the police. This innovation is closely linked to domestic violence since, in most cases, child sexual abuse is perpetrated within the family. Act 119/2013 addressing both stalking and gender-based violence, strengthens, as for prevention, the above "warning" (ammonimento); concerning the punishment, the law introduces new aggravating circumstances, in particular penalty is increased if children under the age of 18 witness violence as well as if the victim is in a particularly vulnerable situation (if pregnant). Moreover, femicide is further strengthened by the introduction of "the particularly close relationship between the victim and the perpetrator as an aggravating circumstance".

94. In line with the guiding principles established by the Istanbul Convention, the Italian law aims at ensuring greater protection for victims both in relation to hearings, which will be protected for vulnerable people, and through a system guaranteeing transparency during on-going investigations and legal proceedings, besides envisaging the obligation to inform victims about the support services at a local level. Furthermore, in compliance with the Istanbul Convention, the law provides for legal aid also for women victims of domestic violence regardless of their income.

95. Within this framework, the Court of Cassation stressed that the consent to sexual acts between spouses or partners is essential: should it fail, the conduct will be of a penal relevance (Sect. III, Decision 36962/2007). By Law-Decree 93, the seriousness of sexual violence as an expression of domination within relationships or as a stalking-type method when a relationship breaks out has been further acknowledged. Moreover, it should be stressed the equalization between conducts perpetrated during and at the end of a relationship. The above Law Decree has also set aside the requirement for "legal" separation, envisaging the increased penalty regardless of the status of partners. Plus, it has introduced a new aggravating circumstance in the event of stalking, via new social media. From a procedural standpoint, by Art.612-b CC, the remission of lawsuit can be decided through a judicial proceeding, only; and that complaint cannot be withdrawn in the event of serious threats recurrence. By the above Law Decree, the ban on weapons is mandatory while under Art.8 of Law Decree 11/2009, this had been demanded to the assessment of the Questore.

96. From a procedural law standpoint, it is mandatory, inter alia, to inform the victim of the right to free legal aid regardless of her income, pursuant to Art.76 DPR No. 115/2002;

stalking falls within those crimes allowing for wiretapping; it is broadened the range of cases for the expulsion from household, and all protection-related measures have to be promptly communicated, first, to the legal counsel of the victim, then to the victim itself and the local social-care services; no request for withdrawing or replacing the above measures can be accepted should it not be immediately communicated to the legal counsel of the victim, in line with EU Directive 2012/29; family maltreatment and stalking fall within cases of mandatory *flagrante delicto* apprehension; to counter domestic violence, the urgent expulsion from the household falls within the precautionary measures (Art.384-b CCP). This Law Decree also acts upon the order of examination of cases by judicial authorities by prioritising maltreatment (Art.572 CC), sexual violence (Arts. 609-bis to 609-octies CC), and stalking (Art. 612-b CC). To hear minors, for preliminary information purposes, the judicial Police must be supported by psychologists or childhood psychiatrics, as appointed by judicial authorities in cases relating to maltreatment (Art.572 CC), enticement (Art.609 - undecies), stalking (Art.612 - b); For special evidence pre-trial hearing, involving a minor under the age of 16, the justice must adopt measures respecting minor's needs – in addition to prevention measures in case of domestic violence, including against migrant women, and measures for shelters. Finally, Act 117/2014 on the less restrictive legislation on pre-trial detention does not apply in cases of: maltreatment; stalking; and all those conducts under Art.4-b of Penitentiary Act. Protection is also extended to foreign victims, by legislation introducing humanitarian residence permit (Lgs. Decree 286/1998). The above Law Decree broadens the scope of the release of stay permits to: domestic violence, family maltreatment, injuries, FGM, kidnapping, stalking, sexual violence, and those crimes under mandatory *flagrante delicto* apprehension. On 18 November 2013, DEO launched "*Riconosci la Violenza* (Recognize Violence)" Campaign, which was also officially translated into English and Spanish.

97. As for the Extraordinary Plan in accordance with Act 119/2013 (Art.5), financial resources are as follows: a 10-million-Euro allocation for 2013 (Act 119/2013); 10 million Euros for 2014 (Act 147/2013); 9.119.726 million Euros for 2015. As for 2016, 10 million Euros have been envisaged in accordance with Act 147/2013.

98. More generally, as for the protection of the victims, Lgs. Decree 9/2015, transposing Directive 2011/91/EU on the Order of European Protection, aims to ensure the mutual recognition of the effects of the protection measures for the victims of crimes when adopted by the judicial Authorities of EUMS.

99. As for trafficking in human beings (THB), by Legislative Decree 24/2014, transposing EU Directive 2011/36, DEO is the national coordination Authority in charge of coordinating and promoting relevant action. By this Decree, the two programmes under Art. 13 (Act 228) and Art.18 (Act 268) have been incorporated in a single more structured model, to ensure better integration of the victim.

100. In compliance with Directive 2011/36/EU, the above Decree entitles victims to the right to compensation (1,500 Euros, to be paid in accordance with the Annual Fund for Anti-Trafficking Measures). Furthermore, by Act 190/2014, 8 million Euros are to be allocated for the single unified program.

101. Since 2014, with a view to a more comprehensive national strategy, DEO, in cooperation with all relevant national authorities and all other relevant public and private sector stakeholders – has been working on the elaboration of a relevant NAP, to be tentatively adopted by the end of 2015. With a coordinated, inclusive and participatory approach, this Plan is intended to enhance the governance of all national measures besides defining the effective cooperation among all national stakeholders. This Plan thus focuses on prevention, assistance and protection of victims, judicial cooperation, identification of potential victims, and adjustment to national legislation. This National Action Plan will also provide for a national referral mechanism for trafficked persons, minimum protection

standards and standard operating procedures for the referral of victims to the proper service providers.

102. Provided that all forms of trafficking are prohibited (trafficking in persons was introduced in the Italian Criminal Code (Article 601), by Act 228/2003), Legislative Decree 24/2014 amends Articles 600 (Placing/holding a person in conditions of slavery or servitude) and 601 (Trafficking in persons) with the aim of harshening penalties, besides ensuring that all forms of trafficking are comprehensively punished. The Italian CC specifically envisages prosecution in case of trafficking in children under 'child prostitution' (Article 600-b), 'child pornography' (Article 600-ter) and 'possession of pornographic material' (Article 600-quater). More specifically, this conduct is punished even if the crime is not committed by fraud, deceit, and threat or by promising or giving money.

103. As for the protection of victims, in accordance with the relevant European Directive, the above Legislative Decree also amended the Italian CCP in order to extend the existing protection - already envisaged for child victims or mentally ill adult victims - to all adult victims being under particularly vulnerable conditions. Art.1 enlists those who can be considered vulnerable, namely children, unaccompanied minors, elderly persons, persons with disabilities, women, especially if pregnant, single parents with underage children, persons with mental disorders, as well as persons who suffered rape or other serious forms of physical, psychological, sexual or gender-based violence.

104. With the aim of further strengthening the protection of victims, the above Legislative Decree provides for the obligation to adequately inform the trafficked, especially unaccompanied minors. It also envisages that a further Decree will be adopted to define specific mechanisms as for the determination of their age and their identification. Thus, trafficked children are provided with special assistance and care programs, carried out by individualized age-appropriate-related services, as supplied under national assistance projects co-funded by DEO, including dedicated shelters, specific counselling, medical and social support.

105. More generally, the victims or alleged victims of trafficking benefit from assistance and social protection projects promoted and co-funded by DEO. Both adults and children can be victims of forced labour and forced prostitution or other forms of exploitation (forced begging, illegal activities, etc.). From 2000 to 2013, 665 projects were co-funded within the framework of Art.18; from 2006 to 2012, 166 projects were co-funded under Art.13. From 2000 to 2013, 22.699 people (of whom 1.215 were children) had been assisted within the framework of "Art.18 program". From 2006 to 2012, 4.207 people (of whom 240 were children) received assistance under "Art.13 program" (2013-related data is still being elaborated).

106. The dimensions and developments of THB, as well as the high interests of transnational criminal organizations in controlling and managing trafficking in human beings, have forced the Police authorities to make strategic decisions and to re-organize the departmental and local State Police offices. As to the Italian State Police, the Chief of the Police ordered the re-organization of the Aliens' Offices and Squadre Mobili since 2001, by establishing "ad hoc prostitution and Non-EU crime sections". The Immigration Offices have been tasked with "all administrative police practices and activities concerning entry, stay, refusal, repatriation, refugee status, citizenship and any other related issues". The Central Operational Service has always played a very proactive role in professional training of State Police personnel assigned to the local Police offices: the SCO has engaged in promoting and organizing meetings and seminars within ad hoc European projects, in cooperation with International Organizations and NGOs (OIM, Save the Children-Italy). Some specific seminars on trafficking have been organized for the "Special Units" of Squadre Mobili.

107. With a view to promoting multiagency cooperation and the coordination of judicial authority, Police forces and NGOs engaged in this specific sector. On 28 April 2010, the Department of Public Security and the Anti-mafia National Directorate signed a MoU on "Guidelines for coordinating the fight against trafficking in human beings". Very important investigative results have been achieved thanks to a bilateral cooperation project with the Romanian Police authorities, denominated "ITA.RO." - still in progress. Successful operations were carried out thanks to the cooperation between Police forces of the countries involved in transnational crime phenomena, through Interpol and Europol channels. From 2012, the Ministry of Justice has launched the monitoring of relevant proceedings. Plus, as for data-collection, DEO is currently working with ISTAT to set up a national database on trafficking in human beings.

108. The fight against trafficking has also fallen within the priorities of the Italian Presidency of the EU-2014. The Ministry of Foreign Affairs and International Cooperation finances projects in several countries of origin to raise awareness of trafficking for both the public opinion and potential victims. More generally, Italy is enhancing dialogue with third countries through initiatives, such as the Rabat Process. In line with the latter and the UE – Africa Dialogue on Migration and Mobility, the Italian Presidency of the EU has been promoting the "EU-Horn of Africa Migration Route Initiative"/EU-HoAMRI.

109. As for additional measures, mention has to be made of DEO-UNAR activities in elaborating and implementing National Strategies on Roma, LGBTI and Racism, respectively. In accordance with EU Directives 2000/43/EC and 2000/78/EC, within the DEO UNAR is the National Office entrusted with the promotion of equality and the removal of discrimination (Art.7 of Legislative Decree 215/2003). To this end, DEO-UNAR has taken concrete steps to ensure that the protection against discrimination be effective and properly enforced. In terms of activities, mention has to be made of the following: the "National week against racism"; "National week against violence" - the latter run by DEO especially within the national school system; capacity-building; monitoring; and data-collection exercises, besides supporting other relevant Institutions and promoting human rights education courses for law enforcement agencies, jointly with OSCAD. As a way of example, worthy of mention is the following: free civil mediation service; collaboration with the National Bar Council; and contribution and support for the annual statistical Dossier on Immigration (2014 edition from "discrimination to rights"), together with IDOS: This report provides update of the statistical framework on migration of women and men, foreign residents in Italy, immigrants' inclusion in the social and economic life, and a multi-religious overview. Further, DEO-UNAR is the National Contact Point for the National Strategy on Roma Integration, in accordance with EC Commission's Communication No.173/2011. DEO has also adopted, and implements, through UNAR, the First National Strategy on LGBTI people's rights, 2013-2015. Last, DEO-UNAR has just finalised the Action Plan against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which has been recently agreed upon by the Unified Conference.[7] DEO-UNAR has also resumed the National Working Group on Religions - to promote mutual respect among religious minorities in Italy.

(a) As for the Roma Strategy, it focuses on the EU Priorities (Housing, Labour, Education, Health). However, Italy decided to add gender perspective, non-discrimination and a human rights-based approach as crosscutting.

[7] In all the above national Strategies, the approach is integrated, participatory and inclusive so as to mainly involve relevant CSOs, an regional and local Authorities, in particular through the National Association of Italian Municipalities (ANCI) and the State-Region Conference.

(b) In 2012, Italy joined the CoE programme "Combating discrimination on the grounds of sexual orientation and gender identity", with DEO-UNAR acting as the national focal point tasked with the development of the LGBT National Strategy - formally adopted by Ministerial Decree in April 2013. In this regard, DEO through UNAR has introduced a governance system, which includes all relevant stakeholders (i.e. OSCAD, Penitentiary Administration, Italian Press Federation). From a thematic standpoint, labour and employment sectors are specifically covered. Attention is also paid to other major areas of concern, such as education (integration, overcoming stereotypes and anti-bullying), safety and prisons, communication and media.

(c) As for the (just-finalised) Plan against Racism (approved by the Conference State-Regions in May 2015), in terms of target group and scope, it covers both foreign citizens who live in Italy and Italian citizens of foreign origin, including those belonging to religious and ethnic and linguistic minorities. From a substantial standpoint, this Plan includes eight thematic areas/priorities (Work and employment; Housing; Education; Health; Contacts with Public Administration; Law enforcement; Sport; Media and Communication), including concerns, actions, and objectives to be achieved, inter alia, by affirmative actions, in line with the legislation in force.

(d) As for hate crimes, in line with the domestic relevant criminal legislation (Art.3 of Act 654/1975, Reale Act, and Law Decree 122/1993 converted into Act 205/1993 (the so-called Mancino Law) - which expressly protect against racism on the ground of race, ethnicity, nationality/origin, religion, as well as historical linguistic minorities pursuant to Art. 18bis of Act No. 482/1999 - all relevant criminal conducts are to be prosecuted *ex officio*. In accordance with Art.6, para.1, of the above Mancino Law, all conducts aggravated by the facts/circumstances enlisted under Art.3 are to be prosecuted *ex officio*, as well. The Italian legal system includes specific provisions to combat racist and xenophobic speech, including those actions directed to spread ideas founded on racial or ethnic hatred and the incitement to commit acts of violence on racial, ethnic or religious grounds. The legislation in force punishes the constitution of, organizations, associations, movements or groups, which have, among their aims, the incitement to discrimination or to violence motivated by racial, ethnic or religious motivation. It also provides for a special aggravating circumstance for all crimes committed on the ground of discrimination or racial hatred. In light of constitutional principles, the penal action by the public attorney's office is mandatory. Therefore, prosecutors are able to investigate any alleged discriminatory motive associated with a crime irrespective of the mention of such motive in the report drawn up by Police authorities.

110. Additionally, mention has to be made of the specialized investigative Units on hate crimes/hate speech. In this regard, within the State Police, the following units are to be considered:

(a) Digos, responsible for crimes motivated by: xenophobia, racism, anti-Semitism and overall religion (including Islamophobia);

(b) The local investigative units of the Police (*squadra mobile*) – specifically the units for vulnerable groups, responsible for crimes motivated by the following grounds: disability, sexual orientation, gender identity, sex (though a debate remains pending with regard to the nexus between sex and hate crimes);

(c) The postal Police with responsibility for *web-related crimes*;

(d) The ad hoc units at the public attorney's offices.

111. Within this framework, from a judicial standpoint, with due respect to and given the judicial safeguards set forth by the Constitution and relevant legislation , should new events emerge, the Court can admit additional evidence in accordance with Arts.516, 517, 518,

CCP. In general terms, the Court can always decide a more severe penalty in light of new circumstances or specific evidence. Should the Court find new facts - compared to those already under trial -, it has to mandate the public attorney to proceed separately, unless the attorney and the defendant decide to do otherwise (Art.518 CCP).

112. Under the Italian Presidency of the Council of the European Union-2014, we organized, jointly with the European Commission, a Joint High Level Event on Non-Discrimination, Diversity and Equality, in Rome, on November 6-7, 2014, entitled "Shaping the Future of Equality Policies in the EU". This Event brought together 250 high-level delegates (governments, social partners, businesses, civil society, media, academics and independent experts) from EU and Non-EU countries. There were five panel sessions during the event, including a Ministerial panel and a session dedicated to discussing the initiative aimed at establishing the High Level Group on Non-Discrimination, Equality and Diversity under the umbrella of the European Commission, by 2015. The following themes were addressed: equality and non-discrimination in economic recovery, new directions for diversity management, new possibilities in valuing equality and diversity – towards a cultural change and future perspectives on access to justice. "Soapbox" sessions were held to provide an opportunity for people and organizations from across the different grounds to exchange views on current issues and future challenges. These sessions covered the grounds of ethnicity and religion, sexual orientation and gender identity, and age. The effective implementation of antidiscrimination legislation in place was a repeated concern at the High Level Event. "Under-reporting of discrimination cases" was identified as a threat to legislation's effectiveness. All stakeholders were seen to have an important role to build confidence. It was suggested, inter alia, that the High Level Group on Non-Discrimination, Diversity and Equality could be a key forum in devising and mobilizing an effective response to under-reporting.

113. The 'Declaration of Rome', prepared by the Italian Presidency of the Council of the European Union and adopted at the opening of the above Event, sets out fourteen different governmental commitments, including, inter alia, a specific focus on HRE.

Other issues

114. Following the ratification of the Optional Protocol to the UN Convention against Torture by Act 195/2012 and the so-called pilot-judgment of ECtHR on the case of Mr. Torreggiani and Others v. Italy (Complaints 4357/09, 46882/09, 55400/09, 57875/09, 61535/09, 35315/10, 37818/10), Law-Decree 146/2013 was converted into Act 10/2014, with the aim of addressing prison overcrowding and full respect for HR of detainees and prisoners. Said measure provides *inter alia* for the establishment of the National Ombudsman for the rights of detainees and prisoners.

115. In a nutshell, this is a collegial body, established at the Ministry of Justice, consisting of a Chairman and two members. The mandate of the Ombudsman is to monitor and oversee the treatment of the persons deprived of their liberty in places of detention; and that the execution of relevant measures is in accordance with the Constitution, relevant legislation and international standards. For this purpose, it is attributed to him/her: the power of visit, even without previous authorization, the prisons, correctional facilities, judicial psychiatric hospitals and all those other Institutions in which inmates are the recipients of detention security measures, including also the CIE; the power to require information and documents to the Authorities responsible for the relevant facilities; and finally the power to formulate specific recommendations.

116. In brief:

(a) At the Ministry of Justice, it is set up the National Ombudsman/Authority on the Rights of Persons Detained or Deprived of Personal Liberty (hereinafter referred to as the national Ombudsman/Guarantor).

(b) The National Ombudsman is a collegial body, composed of a Chairman and two members, who shall hold office for a five year-term, not renewable. They are selected from among representatives, who are not civil servants and have a specific expertise in the field of human rights.

(c) The members of the National Ombudsman cannot take institutional positions, including elective or positions of responsibility in political parties. They shall be replaced immediately in the event of resignation, death, arisen incompatibility, proven mental or physical impairment, serious violation of the duties inherent to the discharge of their mandate, or if they are convicted by definitive verdict for a crime committed intentionally. They are not entitled to remuneration for their work, without prejudice to the right to reimbursement of expenses.

(d) As for the National Ombudsman, making use of the facilities and resources provided by the Minister of Justice, an office staffed by the personnel of the same Ministry, chosen on the basis of knowledge acquired in the areas falling under the responsibilities of the Ombudsman, is to be set up. The facility, structure and composition of the above Office shall be determined by specific Regulation of the Minister of Justice.

(e) In terms of functions, the National Ombudsman, besides promoting and encouraging collaboration with local guarantors and other relevant institutional bodies responsible on the same subjects, shall:

(a) monitor and oversee custody measures concerning detainees, internees, persons subject to preventive detention or other forms of restriction of personal liberty - to be implemented in accordance with the rules and principles laid down by the Italian Constitution, Italian legislation and regulation and relevant international standards;

(b) visit, without the need for authorization, prisons, judicial psychiatric hospitals, medical facilities designed to accommodate persons subject to custodial security measures, therapeutic communities and all those private and public facilities where there are people subject inter alia to alternative measures or the precautionary measure of house arrest, juvenile detention facilities and those communities for minors under orders by the judiciary, as well as - with prior notice and without any impact on the investigation in progress - the police security rooms and, without restriction, any room used for functional restrictive purpose;

(c) have access to, upon - even oral - consent of the person concerned, the documents contained in the file of the person detained or deprived of personal liberty and in any case to the acts relating to the conditions of detention or deprivation of liberty;

(d) request the governing body of the facilities referred to in subparagraph b) the information and documents necessary. In the event that the administration does not give a response within thirty days, the competent supervisory magistrate shall be informed; and the Ombudsman may request that an order of access be released;

(e) verify the compliance with the obligations related to the rights provided for in Articles 20, 21, 22, and 23 of the Rules of the Decree of the President of the Republic dated August 31, 1999, No. 394, as amended, also at the Centres for identification and expulsion under Article 14 of the consolidated Text on Immigration (Legislative Decree of 25 July 1998 No.286, as amended), by accessing, without whatsoever restrictions, any room;

(f) make specific recommendations to the administration concerned, if it ascertains violations or the validity of the requests and complaints brought about under

Article 35 of the Penitentiary Act. The administration concerned, in case of refusal, shall express a motivated dissent, within thirty days; g) transmit an annual report on its activities to the Presidents of the Senate and the House of Deputies, as well as to the Minister of the Interior and the Minister of Justice.

117. **To implement the above legislation, Regulation No. 36 has been adopted, on March 11, 2015.**

118. As for the ratification of the ICMW, Italy recalls its recent consideration under UPR-II (October 2014-March 2015): Following the ratification of ILO Conventions C 143 (Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers) and C189 (Domestic workers), Italy accepted to be periodically reviewed. As for the latter, the initial report illustrates the protection of domestic workers. Additionally, Italy is committed to promoting a relevant debate at the European level. As for ICPPED, the ratification process is underway by means of Bill 2764/S.

119. As for counter-terrorism measures, the latest amendment refers to the issue of "foreign fighters". Law Decree 7/2015 envisages urgent measures, inter alia, to punish the so-called *foreign fighters*. This has been adopted to follow up, inter alia, to UNSCR2178. Among relevant provisions, it envisages the crime of organization of transfer for terrorism purposes (Art. 270-*quater.1*) besides punishing whoever trains or is trained to this end (Art. 270-*quinquies)*. Procedurally, the mandate of the Anti-Mafia National Coordination Office has been broadened so that it also includes and deals with terrorism.

120. From a legislative standpoint (chronological order), mention can be made, inter alia, of the following: (relevant instruments, at the regional level) the European Convention for the Repression of Terrorism, adopted in Strasbourg on January 27, 1977, which was ratified by Italy by means of Act no. 719/85; (at the EU level) the Common Position of the European Union which was adopted on January 27, 1977; the Action Plan to Fight Terrorism, adopted in September 2001; the European Union Common List of Terrorist as a follow-up to Common Positions 930-931/PESC/2001 which translated UNSC Resolution 1373 (28th September 2001) into Community instruments; the Framework Decision on Combating Terrorism (providing for the first time a common definition of "terrorist offence" and of individuals and organizations responsible for relevant offences), adopted by the EU Council, on June 13, 2002 (2002/475/JHA); and the EU Counter-Terrorism Strategy-2005.

121. Tracing back to 2001, at the domestic level, in the aftermath of September 11, 2001, the Italian Government urgently adopted Law Decree 374/01, entitled "Urgent Provisions in order to fight international terrorism", as confirmed by Act 438/01. By this Decree, the Government introduced into the Italian legal system the crime of "international terrorism" (Art.270-b CC). Art. 1 of Act 438/01 stipulates that "anyone, who promotes, sets up, organizes, directs or finances associations that intend to commit violent acts with the aim of terrorism or subversion of the democratic order, is punished with a detention penalty of up to seven years. Whoever participates in such associations is punished with a detention penalty of up to ten years. The terrorist aim emerges even when violent acts are directed against a foreign country, an international institution or organization".

122. At the substantial law level, the most important change brought about by the amendment to Art.270-b CC is the broadening of the scope of terrorism. Under Article 270, para.3, CC, the scope of terrorism has been extended, by including violent acts committed against a foreign State, international institution or organization; and the repression of the planning of violent acts with the aim of terrorism is also included. Law Decree 374/01 introduced an additional criminal offence concerning "assistance to associates". Art.270 ter CC provides for the detention penalty up to four years, for "whoever - excluding the case of

participation in and abetting the crime – either shelters, or gives hospitality, or provides transportation and communication means to those participating in the associations enlisted under Arts.270 – 270-b". By Act 34/03, the Parliament amended Art.280-b concerning "acts of terrorism by use of explosive and deadly devices". In doing so, the list of offences concerning attacks with subversive and terrorist's aim directed to damage personal property and assets was broadened.

123. Further to the events occurred in London and in Sharm-el-Sheik in summer 2005, Italy urgently passed Law Decree 144/05, entitled "Urgent measures to contrast international terrorism", then converted into Act 155/2005, which is still in force.

124. By Act 155/2005, the main modifications are hereinafter indicated: As for the identification of suspected persons by the judicial Police, Article 349, para.2, CCP provides for the public prosecutor to authorize the judicial Police to carry out DNA tests by coercively taking hair and saliva samples, in the respect of the personal dignity of the individual. The time limit for judicial Police detention was extended from 12 to 24 hours when suspected persons who are to be identified, refuse to be identified or give presumably false personal details or identification documents (Art.349, para.4, CCP). Under Art.349, para.5, CCP, the public prosecutor is to be immediately informed of the time when an individual was accompanied to the judicial Police's premises. The public prosecutor can order that said individual be released when s/he considers that the conditions to retain him/her are not met.

125. Moreover, para.6 of said Section provides for the public prosecutor to be informed of the time when the accompanied person was released. An aggravating circumstance is provided for when the suspected person gives false statements. Using, possessing and making false documents was introduced by Art.497-b CC. As to said offence, the discretionary arrest in flagrante delicto is provided for by Art.381, para.2, CCP. The arrest in flagrante delicto is mandatory also for terrorism offences and for offences committed with the intent to subvert the democratic order (Art.380, para.2, letter i). Terrorism offences, even with an international scope, or offences committed with the intent to subvert the democratic order are part of the offences, which are subject to Police detention (Art.384, para.1, CCP). The detention of a suspected person on the initiative of the judicial Police is provided for when specific elements are discovered, among which lies the possession of false documents (as explicitly provided for by Art.384, para.3, CCP). As for preventive measures, the arrest of individuals not caught in flagrante delicto is re-introduced when the obligations relating to special surveillance have been infringed (Art.9, para.2, Act 1423/1956). Art.1-b of Act 431/2001 provides for any notification to be sent to the State Prosecutor [Procuratore della Repubblica] for him/her to take any provisional measure in order to "freeze" property, to prevent property or resources available to terrorist organizations from being dissipated, concealed or used to finance terrorist actions. In doing so, Law provides for the mandatory confiscation of the means and assets that are used or aim at committing the crime under reference. Art.270, paras.4 and 5, CC provides for the offences of recruiting and training for terrorism purposes, which are punishable with imprisonment up to 15 and 10 years, respectively. Art.270, para.6, CCP provides for the offence of conduct for terrorism purposes and explicitly makes reference to the definitions provided for by agreements and provisions of international law. Art.151, para.1, CCP reduces the duties incumbent on the judicial Police in the service of documents in order to meet with all the available resources the major commitment of fighting against terrorism and organized crime. Examinations for investigation purposes, already prescribed for mafia-related offences (Act 356/1992), were introduced to also obtain from convicted persons information, which could be useful to prevent and fight against offences committed for terrorism purposes, even with an international scope, or to subvert the democratic order (Article 18-b Penitentiary Act). Last, Art.3 of Act 155 applies with regard to the possibility of immediate expulsion for those individuals who are suspected of terrorism.

126. With specific regard to victims of terrorism, Italian authorities adopted ad hoc legislation aimed at protecting all those who are victims, including their families, or are affected by terrorism or mafia-type criminal organizations (and suffer from the consequences of grave or deadly injuries), by providing benefits, including financial ones. To this end, Act 466/80 provides for special grants, to be allocated to those who are victims of terrorism when on duty.

127. Following the amendments introduced by Act 720/81, the above-mentioned Law also included amongst the beneficiaries, foreign citizens, stateless persons and their surviving relatives who suffer from terrorist attacks, within domestic borders. Subsequently, Act 407/90 increased the amount of the grant and extended it to victims of mafia-related offences. Act 407/98 provided for a monthly life allowance, to be allocated to the wounded with a minimum invalidity (25%).

128. Along these lines, Act 206/04 introduced amendments on "New norms in favor of victims of terrorism and massacres of terrorist type". This Act - providing for social security and health-care services-related benefits – considered also those Italians who are victims of terrorist acts occurred abroad, from January 1, 2003 onwards.

General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

129. Mention should be made of some other Italian activities under the rotating Presidency of the EU (July-December 2014): DEO organized an ad hoc prep-conference to Beijing Plus 20 gathering in Rome, last October 2014, about 20 EU Ministers for Equal Opportunities; and the re-launching of the negotiation on the so-called horizontal Non Discrimination Directive of the EU. As for relevant jurisprudence, mention should be made of Decision 138/2010 by the Constitutional Court, on the concept of family (Art.29 Constitution), which – in a nutshell - does not expressly mention the different sex of partners and therefore detects a vacuum in the national legislative framework: this verdict has re-launched the debate on same-sex couple-rights. More generally, the debate at all levels is intense with regard to, inter alia: the double-barrelled surname for children; single parent-adoption-related rights; euthanasia; and Medically Assisted Procreation. As for additional initiatives such as National Action Plans, please refer to the information above provided (VAW, Trafficking, 1325, Roma, Racism, LGBTI). Furthermore, Italy is also preparing the new Action Plan on Children and Adolescents in line with UN standards, as well as the result-oriented NAP on Business and Human Rights - which follows up to the Foundation of a NAP on BHR submitted to the European Commission, in late December 2013. Last, as for ICPPED, the ratification process is underway by Bill 2764/S.

ANNEXES: Ministry of Justice-Department of Penitentiary Administration (Plan of Action and relevant data); (and data from) ISTAT, and Ministry of Interior-Department of Public Security.